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FINAL REPORT OF THE GARRISON UNIT JOINT TRIBAL ADVISORY COMMITTEE

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

FINAL REPORT OF THE GARRISON UNIT JOINT TRIBAL ADVISORY COMMITTEE

NOVEMBER 19, 1987
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GARRISON UNIT JOINT TRIBAL ADVISORY COMMITTEE FINAL REPORT

THURSDAY, NOVEMBER 19, 1987

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 2 p.m., in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, Burdick, Daschle, Evans, Murkowski, and McCain.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The committee will please come to order.

On March 31 of this year, this committee held an oversight hearing on the final report of the Garrison Unit Joint Tribal Advisory Committee with the Senate Energy and Natural Resources Committee and the Water and Power Subcommittee of the House Interior and Insular Affairs Committee. At that time, the Three Affiliated Tribes of the Fort Berthold Reservation and the Standing Rock Sioux Tribe told us of the devastating effects of their forced removal from the lands they had traditionally occupied in the fertile areas of the Missouri River bottom lands.

This removal was brought about because of the construction of the Garrison Unit of the Pick-Sloan Missouri Basin program, a project constructed by the Army Corps of Engineers which included the construction of the Garrison Dam, Lake Sakakawea, and the Oahe Reservoir.

Although the tribes received financial compensation at the time of the taking of their lands, construction was begun before agreements had been signed by the tribes, and the Joint Advisory Committee concludes that "the tribes of the Standing Rock and Fort Berthold Indian Reservations bore an inordinate share of the cost of implementing Pick-Sloan Missouri Basin program mainstream reservoirs."

The resulting disruption of the affected tribal communities has manifested itself in health statistics which are alarming, and the committee's report supports the tribes' perspective that they did not receive what they were promised in exchange for their lands.

Irrigation projects to allow agricultural development of land that was exchanged for fertile farm land have yet to be built; financial assistance for on-farm development once irrigation systems are made available has not been forthcoming; tribal water rights have not been protected, and some tribal communities must rely on polluted sources as their only source of water; lands which were found to be excess to project needs were to have been returned and never have been; schools, hospitals, and infrastructures that were promised were never built; and adequate compensation comparable to that made to non-Indians in the project area remains to be paid.

On May 12, 1986, the Garrison Diversion Unit Reformulation Act was enacted into law, authorizing the Secretary of the Interior to, first, develop irrigation in the project service areas within the boundaries of the Fort Berthold and Standing Rock Indian Reservations; and, second, construct, operate, and maintain such municipal, rural, and industrial water systems as the Secretary deems necessary to meet the economic, public health, and environmental needs of the Fort Berthold, Standing Rock, and Fort Totten Indian Reservations.

At the committee's March hearing, the Federal agencies involved pledged to work with the tribes to implement the advisory committee's recommendations, and we are here today to assess what progress has been made in the interim.

The toll on the lives of the Indian people who were forced to leave their homes and traditional lands cannot be measured and perhaps can never be adequately compensated, but this committee will not allow the commitments that were made by the Federal Government at the time these projects were constructed to remain unfulfilled.

I would like to call upon my distinguished colleague, Senator Burdick, for any statement he may have.

Senator BURDICK. I am pleased to see the representatives of the Three Affiliated Tribes and the Standing Rock Sioux Tribe here today. Welcome to all of you.

I look forward to hearing a progress report from you and to learning more about the proposed bills that you have worked out so diligently in the past several months. I doubt that anyone in this room today would question that your tribes have carried an inordinate share of the cost of implementing the Pick-Sloan Missouri Basin program.

Today's hearing takes us one step closer to resolving the inequities borne by the men, women, and children of the Arickara, Hidatsa, Mandan, and Sioux Nations. I look forward to hearing from you all.

The CHAIRMAN. Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

I commend you for holding this hearing today.

Having had some exposure in the area previously with Energy Committee's Subcommittee on Water and Power and having held hearings in both North and South Dakota, I know the intensity of these issues, and I hope that the witnesses are able to evaluate not only the return that has benefitted the State of North Dakota but the justice due to those who have made a sacrifice so those benefits could occur.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Our first witness is the Administrator of the Western Area Power Administration of Denver, Colorado, Mr. William Clagett.

STATEMENT OF WILLIAM CLAGETT, ADMINISTRATOR, WESTERN AREA POWER ADMINISTRATION, DENVER, CO

Mr. CLAGETT. Thank you, Mr. Chairman.

It is my pleasure to be here, and what I would like to do is submit my prepared statement for the record and just summarize things a little bit.

The CHAIRMAN. So ordered.

Mr. CLAGETT. Mr. Chairman, I am here representing the Western Area Power Administration, and it would probably be a good reminder for some of the people who are in attendance for me to mention some background on the Western Area Power Administration.

We are the Federal power marketing administration that is responsible for marketing the output of the dams that are being discussed here today. We do business in 15 States. We were created by an Act of Congress when the Department of Energy was formed.

I am here only to discuss the power marketing implications of these proposals. I am not here to offer any judgments on the merits of those proposals. I am just here as someone from the Western Area Power Administration, which is charged by Congress with marketing power at the lowest possible rates consistent with sound business principles.

We have analyzed the proposals and have found that the impacts on the rates would be substantial. The increase in those rates, depending on your choice of assumptions under the two proposals, would range from an increase of 12 percent to as much as 40 percent for power customers.

Other than that, Mr. Chairman, I think that pretty well summarizes our reaction to the proposals from a marketing standpoint. If introduced, the Administration would have to oppose either proposal because of the impact on rates.

That concludes my summary, Mr. Chairman.

[Prepared statement of Mr. Clagett appears in the appendix.]

The CHAIRMAN. I would like to call upon Senator Burdick to begin the questioning, because this matter is within his jurisdiction.

Senator Burdick.

Senator BURDICK. Thank you, Mr. Chairman.

You have been provided with draft language that provides a mechanism for financing just compensation for the Three Affiliated Tribes utilizing receipts available from the integrated programs of the Eastern Division of the Pick-Sloan Missouri Basin project. Can you advise this committee whether the language is consistent with your current and future level of receipts and your method of scheduled repayment for the Pick-Sloan Missouri Basin program?

Mr. CLAGETT. Senator, the answer to that is yes. The key to that answer is the last sentence in that draft proposal, and there is sufficient cash flow to meet the proposal's requirements.

Senator BURDICK. Can you advise this committee as to the amounts available on an annual basis for deposit in a just compensation account established on behalf of the Three Affiliated Tribes?

Mr. CLAGETT. Yes, sir; the net annual revenue available for repayment of investment varies from $19 million in a poor water year to as much as $68 million in a good water year.

Senator BURDICK. Can you advise this committee as to whether your current and future level of receipts and your present method and schedule of repayment would support an annual deposit of $3.568 million plus 4 percent interest on the unpaid balance of the principal amount to the just compensation account on behalf of the Three Affiliated Tribes?

Mr. CLAGETT. Yes; it will cover that.

Senator BURDICK. Can you advise this committee as to whether recent Congressional changes in the features of the Pick-Sloan program will likely facilitate the deposit of the annual amount specified by the draft language in the just compensation account on behalf of the Three Affiliated Tribes?

Mr. CLAGETT. The recent modifications as a result of the Garrison Diversion Unit Reformulation Act did affect some of our repayment procedures, but the answers that I have given are after implementation of the considerations of that act.

Senator BURDICK. Can you advise this committee, given that the total energy production of the Pick-Sloan Missouri Basin program is approximately 60 percent of installed capacity, whether it is practical to enhance the system's energy production so as to increase the receipts available for deposit in a just compensation account on behalf of the Three Affiliated Tribes?

Mr. CLAGETT. Senator, the power plants now on the river are essentially utilizing all the water available. We are not aware of any mechanism whereby the energy output of those plants could be improved beyond what they are already producing.

Senator BURDICK. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Murkowski?

Senator BURDICK. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Clagett, is the current 7.4 mill rate higher than it would be if the integrated projects were not included in the Dick-Sloan Missouri Basin Program?

Mr. CLAGETT. Could you repeat that for me, Senator?

The CHAIRMAN. What I am trying to ask you is, would the current 7.4 rate be less if the integrated projects had not been included in the Pick-Sloan Missouri Basin Program?

Mr. CLAGETT. Senator, I believe we would have to look at which part of that integrated system you are talking about. Some of those power plants are much less expensive than others. The 7.4 is a composite.

The CHAIRMAN. Give us an example.

Mr. CLAGETT. I am sorry to say I am not familiar with which power plant is a low cost producer and which is a high cost producer. We market on a composite basis to recover all the costs.

The CHAIRMAN. You have stated in your statement that a 3 mill increase may be expected from the proposals advanced by the tribes. Throughout the Missouri River Basin power marketing system, what percentage of the power supply of the public utilities, REA's and REC's, is supplied by your agency, WAPA?

Mr. CLAGETT. Depending on how much power they signed up for originally and how much the load has grown since they signed up, we have customers that get only 10 or 15 percent of their load supplied by power from us and some that get as much as 70 or 80 percent of their load supplied by power provided by us.

The CHAIRMAN. What does the REA get?

Mr. CLAGETT. Which one?

The CHAIRMAN. In your area.

Mr. CLAGETT. Well, there are several of them. Generally, they get less than half of their power from us.

The CHAIRMAN. What about the REC?

Mr. CLAGETT. Again, it would depend on which one. Basin Electric, for example, has over 100 member systems or distribution co-ops that it supplies power to. Those distribution co-ops are formed in groups of medium-sized G and Ts, and some of those are running around 30 percent and some about 50 percent of their power supplied by us.

The CHAIRMAN. What is the average retail power rate for the Missouri River Basin?

Mr. CLAGETT. The retail power rates for the Missouri River Basin range from about 4 to 8 cents per kilowatthour (kWh), depending on the supplier. The retail power rate is the rate to the end user or consumer and includes the utility's costs of transmission and distribution of the power, as well as the costs of a mixture of old and new powerplants and the fuel they consume. The wholesale power rates for the Missouri River Basin range from about 3.5 to 5.5 cents per kWh. The wholesale power rate includes the costs of a mixture of old and new power plants and the fuel they consume, but does not always incude the utility's transmission and distribution costs. Western sells power on a wholesale basis in the Missouri River Basin, from relatively old powerplants. Some of Western's customers are small municipalities or rural electric cooperatives in economically disadvantaged rural areas whose needs are primarily supplied by Western.

The CHAIRMAN. Would this retail power rate be affected by the 3 mill increase?

Mr. CLAGETT. It would be affected but not in direct proportion, because, as you have already covered, we only supply part of the power for that area.

The CHAIRMAN. Is your administration opposed to any of the project revenues being used to compensate the tribes?

Mr. CLAGETT. When you say my administration, are you talking about WAPA?

The CHAIRMAN. WAPA, yes.

Mr. CLAGETT. I don't know that we have any feelings or position on that, Mr. Chairman. We try to carry out the provisions that Congress gave us which is to supply that power at the lowest possible cost consistent with sound business principles. There are some other guidelines on widespread use and preference for public entities and so on.

The CHAIRMAN. By that answer, am I correct to say that you are not opposed?

Mr. **Clagett**. If that means we are in a neutral position, yes, I would like to take that position.

The **Chairman**. I thank you very much, sir.

Senator **Burdick**. Mr. Chairman, I have one more question.

The **Chairman**. Certainly, Senator.

Senator **Burdick**. I notice in your prepared statement it says the proposal would increase the present rates for power that WAPA supplies to Pick-Sloan Missouri Basin customers from 7.4 mills/kWh to as much as 10.4 mills/kWh, a 40 percent increase. When was that study made?

Mr. **Clagett**. That was just made in the last few days, Senator, as we tried to analyze these two proposals. The 40 percent increase is the impact if both proposals were enacted.

Senator **Burdick**. What do you mean by both proposals?

Mr. **Clagett**. The Three Affiliated Tribes and the Standing Rock Sioux proposals.

Senator **Burdick**. I see.

In light of your affirmative responses to the draft language, is it true that there would be no need to increase preference power rates to Pick-Sloan customers in order to accommodate the deposit of a specified amount to a just compensation account on an annual basis?

Mr. **Clagett**. If the alternative language we have been discussing were enacted, you are correct, Senator. There would be no rate increase.

Senator **Burdick**. No rate increase on the preference power rates?

Mr. **Clagett**. Correct.

Senator **Burdick**. That is dependent upon adopting this language, though, you say.

Mr. **Clagett**. Yes, sir.

Senator **Burdick**. That is all I have. Thank you.

The **Chairman**. I thank you very much, sir.

Mr. **Clagett**. Thank you, Mr. Chairman.

The **Chairman**. Our next witness is the Acting Assistant Secretary of the Army for Civil Works, General John Doyle.

General, welcome, sir.

STATEMENT OF JOHN S. DOYLE, ACTING ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS, U.S. DEPARTMENT OF THE ARMY, ACCOMPANIED BY JOHN VELEHRADSKY

Mr. **Doyle**. Thank you, Mr. Chairman.

As you mentioned, I am John Doyle, Acting Assistant Secretary of the Army for Civil Works.

I am very pleased and honored to be here. I am honored beyond anything that I can take credit for, though, when I receive the title of "General." I wish I were, but, unfortunately, I am only a civilian and not part of the Army establishment. But, thank you, sir. I appreciate the thought that goes behind it.

Accompanying me here today is Mr. John Velehradsky, Chief of the Planning Division of the Missouri River Division.

As I said, I am pleased to appear to report on the progress made since the March 30, 1987 hearing on implementation of the recommendations of the Joint Tribal Advisory Committee otherwise known as JTAC.

As also requested, I will provide, in the second half of my testimony, views on behalf of the Department of the Army on the legislative proposals of the Standing Rock Sioux Tribe and the Three Affiliated Tribes of the Fort Berthold Reservation. Unfortunately, as will be explained more fully in this statement and the statements of the other Federal witnesses testifying here today, the Administration will oppose certain objectionable provisions of these legislative proposals if introduced as currently drafted.

At the March 30 hearing, Brigadier General Charles E. Dominy expressed our belief that a number of the JTAC recommendations have merit, that the Corps of Engineers would work with the tribes to implement those with merit, but that others would be difficult to implement under our existing authorities and mandates.

The Corps has made considerable progress since March on those items we have authority to implement. We have had a series of meetings with tribal representatives which involved the district, division, and Washington levels of the Corps of Engineers.

In addition, in June, I met with tribal representatives and Senator Burdick to discuss the JTAC recommendations and other issues raised by the Indians. As a follow-up to the June meeting, the Omaha District Engineer, in July, led a team of Washington, division, and district level staff to represent me in visits to the reservations. Following those visits, the district, in coordination with the tribes, developed a plan which responded to the JTAC recommendations, and I approved that plan in late July.

On August 10, I sent a letter to you as well as to other appropriate Members of Congress, State officials, and the tribes summarizing the major elements of that plan. Last week, we provided you and other appropriate Members of Congress and the tribes with a status report on our activities to date.

With your permission, Mr. Chairman, I ask that these two reports be made a part of the record of this hearing.

The CHAIRMAN. Without objection, so ordered.

Mr. DOYLE. Thank you, sir.

[Letter and status report appear in the appendix.]

Mr. DOYLE. The five recommendations in the JTAC report related directly to the civil works program activities are discussed, and our position on each is summarized as follows:

First, the JTAC report recommended, subject to easements for project purposes, the return of former Indian lands which were considered in the report to be excess to project needs. The tribes' recommendation to return some former reservation lands, subject to sloughing and flowage easements, has been reviewed. There may be parcels of land that can be determined excess to project needs.

Therefore, we have initiated a review of our project lands, applying current acquisition criteria, to identify these potentially excess lands.

Second, the JTAC report found that return of excess former Indian lands would provide opportunities for recreational development along the lakeshore as part of a tribal economic enterprise. The Omaha District is working with the respective tribal councils to outline long-term plans which will identify potential recreation areas to improve lake access, satisfy the recreational needs of the area, and contribute to tribal economic development objectives. Such areas could be leased to the tribes and made available for either tribal or private sector development.

Third, the JTAC recommended construction of a bridge to permit reestablishment of a crossing on State Highway 8 in the Elbow woods area in North Dakota. I know of no authority that the Corps has to replace this bridge.

Other items addressed in the report regarding infrastructure replacement at both Lake Sakakawea and Lake Oahe are not within the purview of the Corps of Engineers' programs. These items should be addressed by the other Federal agencies as appropriate.

Fourth, the Standing Rock Sioux Indian Tribe recommended the establishment of an Indian Desk within the Corps of Engineers' headquarters. We agree that, based on a review of the issues raised by the tribe, communications between the Corps and the Indian tribes should be improved.

At my direction, the Omaha District has established an Indian Desk to improve communications with the tribes and to allow the tribes to have a single point of contact to resolve issues of concern.

The Indian Desk was established directly under the District Engineer who has the authority over most decisions regarding Indian issues in our country. Procedures have been established to ensure the issues affecting the Indian people that cannot be resolved at the district level are surfaced and referred for consideration to the appropriate levels of authority in the Department of the Army.

Fifth, one of the JTAC recommendations included a statement that the tribes "were not compensated in an amount calculated by a methodology which accounted for the unique circumstances and values taken from the tribe."

In the original acquisition acts, Congress addressed the question of adequate compensation to the tribes for losses suffered in connection with these projects. It is my understanding, that the Department of the Army has fully and faithfully executed responsibilities entrusted to it under these legislative directives.

The following item, Mr. Chairman, in the JTAC report which could impact on the Corps of Engineers Civil Works program was not included in our Omaha District plan. The item deals with the protection of reserved water rights.

Under Federal law, sanctioned by the Supreme Court, the United States is empowered as a trustee of the Indian tribes to reserve to the tribes enough water to meet the Indians' reasonable needs, including their future needs. These reserved water rights have not been quantified.

It should be noted, however, with respect to the issue of Indian reserved water rights that the Supreme Court has recently made it clear that navigational servitude applies to all riparian and riverbed interests and that even the rights of individual States or Indian tribes in a navigable stream are subject to the paramount power of the United States to ensure that such waters remain free to interstate or foreign commerce. The construction and operation of these projects were authorized through an assertion of the navigation power and, therefore, involve the navigation servitude.

Mr. Chairman, in summarizing our actions to address items raised in the JTAC report, I firmly believe we are responding to the concerns of the tribes within available authorities and that we will continue to do so.

At this point, I would like to shift for just a minute and address my comments to the two legislative proposals which were forwarded by your letter to me.

With respect to these proposals, both contain items which are related to the issue resolution process which we are pursuing with tribal representatives. However, as proposed, the legislation contains some provisions that the Army does oppose, and I have in my formal comments gone into more detail than I will do here in this summary in describing some of those provisions and our objections to them.

With that, Mr. Chairman, I would like to conclude my summary statement, and I would be more than happy to accept any questions you have. I ask that my full prepared statement be submitted for the record in full.

The CHAIRMAN. Your full statement will be made part of the record.

[Prepared statement of Mr. Doyle appears in the appendix.]

The CHAIRMAN. As you have indicated, the JTAC report recommended that former Indian lands that were taken for the Garrison Dam which are in excess to the project use needs should be returned to tribal ownership subject to a flowage easement for project purposes. You have indicated that you are looking into this matter.

In your October 24 status report, you indicated that approximately 500 miles of the Lake Sakakawea shoreline lies within the exterior boundaries of the Fort Berthold Reservation and that approximately 70 grants of easement, licenses, permits, and leases have been made in that area. Am I correct?

Mr. DOYLE. Yes, sir.

The CHAIRMAN. However, in the March testimony of the Corps of Engineers which was made before this committee, your representative stated that there were no excess lands not needed for project purposes that could be returned to the Three Affiliated Tribes. Yet, you have indicated by your status report of October 24 that you have issued 70 grants of easement.

Did your representative lie to the committee?

Mr. DOYLE. No, sir, not at all. The statement was made by General Dominy that there are no excess lands. That is a different question from the question of which of those lands are leased on licensed to others to accomplish those authorized project purposes.

What General Dominy testified to in March was based on a study which was initiated in 1985 and had recently been completed under guidelines provided by GSA. Using those guidelines, no excess lands were identified.

The CHAIRMAN. Would the 70 grants be excess lands?

Mr. DOYLE. No, sir. These are actually out-grants which in many cases are used to accomplish authorized project purposes and are not excess to the project needs.

The term outgrant is used by the Department of the Army to denote the temporary right to use Army lands given in the form of easements, leases, licenses and permits. Such uses could include recreational leases, fish and wildlife management licenses, agricultural leases, easements for utility lines, roads, and railroads and other special use permits. These instruments do not convey the Government's ownership of the land and in no way indicate the land is excess to project requirements; they do allow for uses by other parties which are compatible with authorized project purposes.

The CHAIRMAN. Isn't it true that some of these grants include long-term fish and wildlife management licenses?

Mr. DOYLE. Yes, sir, there are several fish and wildlife licenses with the State.

The CHAIRMAN. What about your position relating to the tribe's management of its treaty rights and resources in this area?

Mr. DOYLE. We are doing nothing in these areas that is in violation of those treaty rights, insofar as I am aware.

The CHAIRMAN. You have indicated that none of the 70 grants can be considered excess, but isn't it true that among the grants that you have made, some involve the permanent sale of shoreline areas to non-Indians for residential and recreational sites?

Mr. DOYLE. Yes, sir, it is true that there were sales of cottage sites, however, none of the 70 outgrants are considered excess.

The 70 outgrants referred to in the October status report include easements for roads and public utilities, permits to the Bureau of Indian Affairs, leases and licenses for public parks and fish and wildlife areas and they are not excess to project purposes. They do not include the sale of lands for cottage sites.

The CHAIRMAN. And that is not excess? Is it part of the project to have these residential and recreational sites for non-Indians?

Mr. DOYLE. The projects are multi-purpose projects. Those purposes include flood control, hydropower, navigation, irrigation, fish and wildlife enhancement, and recreation. So, to have recreational leases is not inconsistent with the recreational purpose, necessarily, of the multi-purpose project.

The CHAIRMAN. What about the residences?

Mr. DOYLE. What about them, sir?

The CHAIRMAN. Is that necessary for your project?

Mr. DOYLE. That is one of the questions that will be looked at in connection with the review of excess lands that we have currently underway.

In the late 1940's and early 1950's, the Army leased lands for cottage and club site use in order to encourage interest in recreation development at this and other projects. The lessees built dwellings for cottage site uses on the leased lands. In 1956, Public Law 84-999 authorized the Secretary of the Army to sell any Government-owned lands within reservoir areas under his control which were being used for or were available for cottage site development. The lands sold were not excess to project purposes, but were sold under Public Law 84-999 for cottage site use and cannot be returned to their former owners or conveyed to the Indians.

The testimony that General Dominy gave reached the conclusion that it did based on criteria he was operating under from GSA. That is not the criteria that I am currently using to evaluate whether or not any lands are currently excess to project needs. It did not include a survey of the lands sold for cottage sites.

The CHAIRMAN. Now, these parcels have been sold. How do you propose to return them to the Indians?

Mr. DOYLE. I haven't indicated that they will be returned to the Indians or that it would be appropriate to return them to the Indians.

The CHAIRMAN. So, you are insisting that these parcels that were sold for residential purposes and recreational purposes are necessary for the project?

Mr. DOYLE. No, sir. I am saying that I am not in a position to determine at this point that they are not consistent with the project. We will have to take a look at that question and be back to you with the results as part of the study that we are currently engaged in.

The CHAIRMAN. How long will it take to resolve this matter?

Mr. DOYLE. We are currently looking at a September 1988 completion date for field level studies by the Omaha District.

The CHAIRMAN. Why is it necessary to change the criteria to determine excess lands?

Mr. DOYLE. I believe that the GSA guidelines that were used in March are not the criteria that reflect what the committee and the Indians are really attempting to have us determine. In conducting this type study, it is general practice not to declare land excess when the cost of disposal exceeds the value of the land. What I understand that you and your colleagues and the Indians want us to determine is what lands that we currently control would be declared excess to our project needs without consideration to costs of disposal and other criteria. That is the study I am looking at.

That is a different question from the one that General Dominy answered.

The CHAIRMAN. In order to complete the record, what is your definition of excess lands?

Mr. DOYLE. Lands not necessary to accomplish the authorized purposes of the project.

The CHAIRMAN. So, there is a possibility that the sale of parcels for residential purposes may be necessary to carry out the project?

Mr. DOYLE. Sir, I will have to take a look at the facts associated with the parcels in question to be able to answer definitively the question. I can't do that here.

The CHAIRMAN. I believe you have created an Indian Desk?

Mr. DOYLE. Yes, sir.

The CHAIRMAN. When was this created?

Mr. DOYLE. Approximately three months ago, and that came on the heels of the recommendations in the JTAC report and a meeting that we had with the tribes and Senator Burdick.

The CHAIRMAN. And is this desk just to serve the interests of Indians in that area of the Garrison Dam or throughout the nation?

Mr. DOYLE. It is to serve the area covered in the JTAC report.

The CHAIRMAN. So, this is an ad hoc Indian Desk?

Mr. DOYLE. This is an Indian Desk that has been established to deal in an improved way with the issues that have been raised and the constituencies affected by the JTAC report.

The CHAIRMAN. Senator Burdick.

Senator Burdick. Mr. Chairman, you have covered the ground quite well, but I would like to ask one last question here.

The committee has been advised that the impact of non-Indian recreational use of the shoreline has resulted in numerous cases of trespass on Indian lands and the disregard of Indian property rights by non-Indians seeking access to shoreline areas. Is your agency vested with authority to address this problem?

Mr. Doyle. Sir, we have a responsibility to operate and maintain our projects in accordance with Congressionally authorized directives. I am not certain to what extent we have enforcement authority over tribal lands. Perhaps I can ask Mr. Velehradsky to answer that, and if we need more, we will supplement our answer for the record.

Mr. Velehradsky. Senator, it is my understanding that, in this instance, we would rely on the State agencies for jurisdiction over the enforcement of laws on those areas. The United States or the Corps of Engineers has no jurisdiction in terms of enforcement within the project. We rely on the State agencies.

Senator Burdick. What do you mean no jurisdiction? They have the jurisdiction. They just assign some of it to somebody else to maintain. They have jurisdiction.

Mr. Velehradsky. We have jurisdiction over the land, but in terms of enforcing State game laws, we do not have any jurisdiction over State game laws.

Senator Burdick. What about trespass?

Mr. Velehradsky. Trespass we would have.

Mr. Doyle. But I think the legal question that we need to look into and amplify for the record is to what extent we have authority to go onto Indian lands to enforce that, and I will provide that for the record, sir. I don't have the answer at the top of my head.

Senator Burdick. This is an anomaly. There is trespass on Indian lands, but you can't go on Indian lands to stop the trespass.

Mr. Doyle. Well, maybe I can, but that is what I have to find out for you. I can't tell you right now, but I will get that for the record.

Senator Burdick. All right. Thank you.

[Material to be supplied follows:]

The Corps relies on local and state police assistance for law enforcement activities on Corps lands. In fact, the Corps has been authorized by law to pay local and state police for expenses incurred when engaged in additional law enforcement activities on Corps lands. The Corps does not possess law enforcement authority on adjacent tribal reservation lands. The Federal Government, as trustee of Indian lands, has an interest and responsibility in protecting tribal lands against intrusion by trespassers. To my knowledge, this function would have to be undertaken by the U.S. Attorney or the U.S. Marshall. In some states, legislation has been passed whereby the state has taken on the responsibility to protect Indian lands from trespassers, and the U.S. Supreme Court has upheld the validity of these statutes. To my knowledge, the State of North Dakota has not enacted such legislation. Thus, the Tribes must rely on the assistance of the U.S. Attorney.

The Chairman. Senator McCain.

Senator McCain. Mr. Chairman, I will admit freely that I am not familiar with all of the details of this situation. I am sure it is one which is fraught with tragedy and great suffering.

Let me just say, though, that from what I am able to read here that there is a request here for some kind of compensation in the range of $360 million to $762 million. Mr. Chairman, there are 20 tribes in the State of Arizona. They have been moved, many of them, from one place to another and suffered dislocation as well for various reasons. I think they are entitled to compensation as well.

We are talking about, I think, an incredible amount of money. I see no real documentation for that kind of money, and I find this, frankly, a bit bizarre given the budget constraints that we are facing in this day, particularly on this day when we are trying to seek an agreement which will have to include both increases in taxes and decreases in benefits to all Americans.

I am sure that the Administration would stoutly oppose this, and, very frankly, Mr. Chairman, I find it so different from any proposal that I have seen in five years of dealing with Indian issues—I was the Chairman of the Republican Task Force on Indian Affairs when I was on the House side— that I frankly am wondering what is going on here.

Where in the world would we come up with $762 million in compensation without some kind of very serious case being made for which I have seen very little documentation? And if we did come up with $762 million, I wonder where in the world we would find it.

So, I would be more than happy to examine this much more carefully, but it seems to me that we may possibly be misleading someone here as to the viability of a proposal of over $760 million in compensation.

I can give you a number of stories of about 15 tribes in Arizona that were moved by the Federal Government for various reasons and shifted around. In fact, we have a relocation process going on right now where I suggest that those people have a case for compensation in the hundreds of millions of dollars as well.

It is not, I am sure, that these particular tribes don't deserve it also, but I would have to receive a lot more information before I would be supportive of sums of money that are in this range.

Thank you, Mr. Chairman.

The CHAIRMAN. I think the recommendations are found in the final report of the advisory committee, and the members of the committee were appointed by the Secretary of the Interior. Isn't that correct?

Mr. DOYLE. Yes, sir.

The CHAIRMAN. And they were not appointed by the tribes in that area.

Mr. DOYLE. That is my understanding.

The CHAIRMAN. So, this is in essence a report of the Administration, and if I am not mistaken, all members agreed upon the report and the recommendations.

I think the record shows that non-Indians receive greater compensation for their lands as compared to Indian lands. What reason do you have—or rationale—for paying non-Indians a better rate than for Indian lands of comparable size and in the same area?

Mr. DOYLE. Mr. Chairman, I am not aware that that is the case, but I will look into the matter. Is there any particular place in the record? Perhaps I will talk to staff afterwards and they can direct me to that.

The CHAIRMAN. I believe the question was brought up in the last hearing, and your representative acknowledged that non-Indians were paid more for their land than Indians. I was just curious. Why so?

Mr. DOYLE. Mr. Chairman, all other things being equal—and I suppose they never are—I can think of no reason why that should have been the case if in fact it occurred.

The CHAIRMAN. Would you submit to us a response to that?

Mr. DOYLE. Absolutely.

[Material to be supplied follows:]

In March, Brigadier General Charles E. Dominy stated that the method of real estate acquisition used at that time was very similar to that used today, wherein contracted real estate personnel survey lands and use fair market value determinations to arrive at appraised amounts. He also said that this appraised value system ws used uniformly within the basin.

Compensation paid to the Three Affiliated Tribes pursuant to Public Law 81-437 was based on an appraisal completed by a Board of Appraisers established by section 3 of that Act. The Board consisted of one member designated by the Secretary of the Interior, one member designated by the Chief of Engineers, and one member designated by the Department of Agriculture. The Board established an appraisal team which consisted of five advisors provided by the BIA, Missouri River Basin Investigation, and four Corps of Engineers representatives. Compensation paid to the Standing Rock Sioux Tribe pursuant to Public Law 85-915 was based on an appraisal completed by an independent appraiser. The independent appraiser was selected by the Chief of Engineers and the Secretary of the Interior pursuant to section 3 of Public Law 81-870. The independent appraisal was reviewed by a committee consisting of two negotiators from the Standing Rock Sioux Tribe, a representative from the Corps of Engineers, and two representatives from the Missouri River Basin Investigation staff.

Upon close examination of a representative sample of Indian/non-Indian land acquisitions from the Omaha District files, the Corps informs me that the Indians and non-Indians received comparable compensation for their lands. In fact, non-Indians received very limited relocation assistance under the Resettlement Act, while the Indians and Tribal organizations received major assistance as prescribed by the Bureau of Indian Affairs and funded under the project. Subsequent legislation has further compensated the Indians by granting them grazing and mineral rights.

Section 14 of Public Law 85-915 gave any individual member of the Standing Rock Sioux Tribe the right to reject payment and have the courts determine the just compensation to which the individual was entitled. Similarly, section 5 of Public Law 81-437 gave the Three Affiliated Tribes the option of having just compensation judicially determined.

The CHAIRMAN. Senator Daschle.

Senator DASCHLE. Mr. Chairman, I have no questions at this time.

The CHAIRMAN. Then, I thank you very much, Mr. Secretary.

Mr. DOYLE. Yes, sir; thank you.

The CHAIRMAN. Our next witness is the Deputy to the Assistant Secretary of Indian Affairs, Mr. Frank Ryan. He will be accompanied by Haydn Lee, Special Assistant to the Commissioner for Indian Affairs.

Mr. Ryan, welcome, sir.

STATEMENT OF FRANK RYAN, DEPUTY TO THE ASSISTANT SECRETARY OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY HAYDN LEE, SPECIAL ASSISTANT TO THE COMMISSIONER FOR INDIAN AFFAIRS, BUREAU OF RECLAMATION

Mr. RYAN. Good afternoon, Mr. Chairman.

Mr. Chairman and members of the committee, I am here to present the position of the Administration on these proposed draft bills. Our testimony will focus on those portions of the recommendations and legislative proposals that affect the programs of the Department of the Interior, and, where relevant, we defer to the comments and positions of the Army Corps of Engineers and the Department of Energy.

At the outset, I think it is important to note that the Administration opposes the proposed legislation as currently drafted. The bills would require the payment of hundreds of millions of dollars in additional compensation to Indian tribes which have already received just compensation for their lost property. Perhaps later we can discuss what constitutes just compensation, or at least I can try to clarify that.

The bills would also require the expenditure of hundreds of millions of dollars on infrastructure facilities and on irrigation projects of unknown economic merit. In a time of severe fiscal restraint, we do not believe that such an intense distribution of Federal funds at 2 out of the 300 Indian reservations and 200 Alaska Native villages is a prudent or equitable implementation of Federal programs.

On March 30, 1987, this committee held a hearing to address the JTAC report. During the hearing, in response to a suggestion by Assistant Secretary Swimmer that there may be a more effective way for the tribes to spend the funds earmarked for irrigation development, the Chairman asked whether the Bureau had explored the idea with the tribes through a consultation process. Mr. Swimmer responded that he would be happy to sit down with the tribes and look at alternative ways of spending the Garrison funds more effectively.

On April 28, 1987, Mr. Swimmer hosted a meeting with the Standing Rock Sioux Tribe, the Three Affiliated Tribes, Congressional staff, and representatives from the agencies directly involved with the Garrison project. Although Mr. Swimmer was prepared to discuss alternative proposals, the focus of the meeting was on achieving implementation of the specific recommendations in the JTAC report.

This meeting served as a springboard from which the tribes engaged in more detailed discussions with the U.S. Army Corps of Engineers, the Western Area Power Authority, and the Bureau of Reclamation concerning implementation of those recommendations. However, no meaningful discussions with the tribes on alternatives to irrigation development have yet been conducted, but we would be pleased to do so at the request of the tribes.

Also at the March 30 hearing, the committee asked Assistant Secretary Swimmer when he would be willing to take administrative steps to coordinate fish and wildlife and law enforcement projects with the Standing Rock Sioux Tribe to protect the tribe's hunting and fishing rights on the reservation in and around Lake Oahe. Assistant Secretary Swimmer stated that he would be prepared to do that at any time the tribes would like to sit down and talk about it, and that he would be happy to arrange such a meeting with the Fish and Wildlife Service.

While the April 28 meeting would have been an appropriate time to discuss the tribes' hunting and fishing rights, other issues such as irrigation development, infrastructure replacement, and economic development were the main subjects of the discussion at that time.

As a followup to the April 28 meeting, in fiscal year 1987, the Bureau of Indian Affairs executed contracts with the Three Affiliated Tribes and the Standing Rock Sioux Tribe to enable the tribes to analyze and research means of initiating the recommendations. The contract activities include consultation with Federal and State water agencies, research and design of tribal water administration authority, consultation with the Corps of Engineers on restoration of shoreline ownership, and establishment of a commission to work with Federal and State agencies to begin restoring lost infrastructure.

Also in fiscal year 1987, the Bureau of Reclamation involved the tribes in the planning process for implementation of the Garrison Diversion Unit Reformulation Act and provided the tribes with $97,000 through an interagency agreement with the Bureau of Indian Affairs. The purpose of this endeavor is to assist the tribes in the preparation of comprehensive plans for the reservations that are to benefit from the Garrison Project.

As the plans are completed and approved, it is our intention that the design data collection and design and construction of the units be accomplished by each tribe on their own reservation under the provisions of the Indian Self-Determination and Education Assistance Act.

At present, the tribes' lawful water entitlements are unknown, and there is no indication that either tribe is interested in pursuing a quantification of their rights.

I would now like to turn to a discussion of the two draft legislative proposals forwarded by the committee. The purpose of the two bills is to implement certain recommendations from the Garrison Unit Joint Tribal Advisory Committee.

With respect to the Standing Rock legislative proposal, section 3 of that proposal authorizes the tribe to share in the propagation and management of the fish resources on and near the reservation and further provides that the tribe shall have exclusive jurisdiction to regulate hunting, fishing, and boating within the boundaries of the reservation.

We do agree that the tribe should be able to benefit from any Federal fishery facilities located on and near the reservation, and although we agree that the tribe's authority to regulate and manage the fish and wildlife resources on the reservation should be recognized, jurisdictional questions do remain between Indian and State authorities. We also assume that section 3 is not intended to supercede existing Federal wildlife statute or case law.

Section 4 of the proposal directs the Secretary to develop irrigation units on the reservation in accordance with the JTAC. The Department cannot support this proposal until it is determined through appropriate studies that the lands in question are practicably irrigable and that the development of those lands is financially justified.

Moreover, even if these conditions were met, funding for new irrigation projects is a low priority in the current fiscal climate, and the Administration would oppose it. We also question the acquiring of fee land farm holdings unless there are willing sellers.

Section 5 of the proposal directs the Secretary to use Pick-Sloan power revenues to compensate the tribe in the amount of $365 million for land taken for construction of the dam and for other damages incurred by the tribe due to construction of the dam. It is not exactly clear how this sum was arrived at.

However, as earlier testimony states, we do not believe that the JTAC report provides the kind of documentation necessary to establish that the tribe is legally entitled to any such additional compensation. In addition, we note that the $10 million annual payments would not be adequate to cover the interest payments, much less retire the debt. We would oppose a direction to the Secretary to provide such compensation.

Section 6 of the proposal provides that the tribe will be involved in the planning, designing, construction, and maintenance of any municipal, rural, and industrial water systems developed under the Garrison Diversion Reformulation Act of 1986, and it clarifies the applicability of the Indian Self-Determination and Education Assistant Act to any such water development. We have no objection to this concept. However, application of the Buy-Indian Act may be more appropriate.

Section 7 of the proposal appears to assume that some land at elevation 1620 feet above the water level of Lake Oahe is surplus to project needs and further directs that such lands be returned to the tribe and held in trust by the United States.

This section also subjects the return of the lands to an easement for flooding and any leases or other rights held by any person prior to transfer back to the tribe. It also clarifies that the tribe shall have civil jurisdiction over persons and property on such lands to the same extent that the tribe has civil jurisdiction over other reservation lands.

While the Department does not object to assuming responsibility for the trust status of any lands returned to the tribe, we would defer to the U.S. Army Corps of Engineers on the issue of whether such lands are surplus to the needs of the project.

Section 8 directs the establishment of an office within the Army Corps of Engineers, and we defer to the Corps on that issue.

With respect to the Three Affiliated Tribes legislative proposal, title I of that proposal establishes an economic recovery fund and endorses the JTAC recommendations and conclusions that the tribes should receive financial compensation from Pick-Sloan power revenues in the amount of $178.4 million for the taking of the land, the displacement of the families, and the construction of the dam and reservoir.

As was stated in our earlier testimony, we do not believe that the JTAC report provides adequate documentation to establish that the tribes are legally entitled to additional financial compensation in the form of the substitute or replacement value of their economic base lost as a result of the siting of Lake Sakakawea. We would oppose a direction to provide such compensation.

Title II of the proposal provides for the replacement of infrastructures. We believe that the need for such infrastructures as education, housing, and roads should be evaluated by the appropriate Federal agencies and included in their annual program and budget plans for each agency, if appropriate.

As a general principle, needs identified for the Three Affiliated Tribes must be weighed fairly against competing needs for similar facilities on other reservations, particularly in an era of fiscal restraint.

Title II directs the development of irrigation and municipal, industrial, and rural water systems for the reservation in accordance with the recommendations and clarifies the applicability of the Indian Self-Determination Act to the development activities. We support timely implementation of all water system development authorized by Public Law 99–294. However, we cannot support irrigation development in excess of that contemplated by that act until it is determined through appropriate studies that such lands are practicably irrigable as well as financially justified. Moreover, as has been stated earlier, application of the Buy-Indian Act may be more appropriate to such development.

This concludes my prepared statement. If I may, I can try to answer your questions.

[Prepared statement of Mr. Ryan appears in the appendix.]

The CHAIRMAN. When the Bureau of Indian Affairs was created, I believe it was created so that the trust responsibilities as set forth in the many treaties and laws of the United States could be faithfully carried out, at the same time, keeping in mind the best interests of the Indian people of the United States.

In this matter, do you believe that you are properly administering the trust resources of the tribes involved?

Mr. RYAN. I am not exactly sure I understand the question. In the context of the bills?

The CHAIRMAN. For example, this report suggests, among many other things, that lands that are excess to the needs of this project be returned to the tribes.

Mr. RYAN. In that specific context, I think if the lands are excess to the needs of the project, they should be.

The CHAIRMAN. Do you think if they are sold for residential purposes they are excess to the needs of the project?

Mr. RYAN. Well, I am not familiar enough with what all the statutory bases are for multi-use projects, so I can't really speak to that.

The CHAIRMAN. Have you read this report of May 23, 1986?

Mr. RYAN. Yes. It has been some time since I read the full report, but yes, I have.

The CHAIRMAN. And I am certain you know that the members of the advisory commission were selected by Secretary Hodel.

Mr. RYAN. Yes, sir; that is correct.

The CHAIRMAN. I gather that your agency did provide input.

Mr. RYAN. There was, I believe, at the staff level quite a bit of input and probably almost on a daily basis in the field.

The CHAIRMAN. And now you are telling us that the recommendations ought to be rejected? This is your committee. We did not appoint this committee; you people appointed this committee.

Mr. RYAN. Well, I think that the reasons why the recommendations are found unacceptable in the context of the proposed legislation are primarily because of fiscal restraint and also because there are some differing views about what it would be that would make—what could be done to make these people whole again in light of everything that has happened to them. In the report, there is documentation; in the sense of trying to value what the lost economic asset was and would be, and that type of evaluation is different from the kind of evaluation you might engage in if you wanted to go out and appraise land for purposes of a Federal condemnation.

So, from the point of view of did the Federal Government adequately appraise land and provide due process and so forth, information has been supplied to this committee at the previous hearing by the Corps of Engineers, and as I recall that testimony, it said that Indians and non-Indians alike were paid the same amount—I mean that the valuation was done the same.

Even saying so, there is other testimony in the record which points to the concerns of replacement or substitute value for the lost resource. I think one of the problems is that the Joint Tribal Advisory Committee's recommendation is a recommendation which deals really in the context of what can be done to replace the asset in the same agricultural terms in terms of irrigation projects and so forth and what it take would to subsidize that project or make it usable.

As I understand the concerns of the Assistant Secretary, Ross Swimmer, his concern was that there is more than one way to provide an economic base or to provide an asset to the tribe. What comes out of the recommendations in the committee's report is essentially a recommendation to constitute some irrigation projects for which it is difficult to really know what the feasibility is in terms of soil and also in terms of cost—and out-year cost, for example, the cost deferred under the Levitt Act and the other costs in terms of preferential power.

If all of those out-year costs were discounted to their present value and rolled up, it might be that the actual project before you in this legislation would be significantly higher.

The other thing that is of concern is that even assuming that the legislation would go forward and pass and become a reality, would it in effect make the tribe whole as it was about 30 or 40 years ago? It is difficult to know that because it is difficult to know whether or not that type of land use or that technology would be sufficient to employ or re-employ heads of households of what had once been 480 families that have been moved.

If it turns out that the project overall is one which will require a continuing Federal subsidy, in a way, it appears as if it is being imposed on the people or maybe it is that they seek to impose it on themselves is an agricultural solution to the results of the dislocation that had occurred before. Maybe it would be better if there had been more thought given to various ways of attempting to make people whole in terms of looking at the creation of different types of economic assets. It is really kind of a question of what is the goal.

One of the sections in the law says that it is aimed at economic development. I think that is what it is getting at, but I don't know if what it will do is that. I don't know that it will necessarily further the economic independence of the tribe if it is tied to a subsidized project.

I am well aware of the fact that, in that part of the country, the predominant resource available to the tribe is agricultural lands and that agricultural development is the most obvious way to look at it. However, it was the feeling of the Assistant Secretary that more alternatives could have existed rather than just this one, and I think it is unfortunate that we only have this one to look at.

At any rate, we had some questions about whether or not the project would be a remedy or a solution for the original dislocation and hardship that these people have endured all these years.

The CHAIRMAN. I have very patiently sat here listening to your many, many reasons why this measure should not be considered. You are the trustee of Indian resources, are you not?

Mr. RYAN. In a sense, I am.

The CHAIRMAN. Well, aren't you the trustee—not "in a sense"—by law and by treaty.

Mr. RYAN. The Bureau of Indian Affairs, yes, sir, is the trustee for Indian resources.

The CHAIRMAN. As trustee, do you believe that your beneficiaries, the Indians, got a good deal out of this one?

Mr. RYAN. No, sir; I do not.

The CHAIRMAN. Then what alternative do you propose? You have given every reason to turn this one down.

Mr. RYAN. Well, the only alternative that I can propose is the one that Assistant Secretary Swimmer offered which is to try to sit down and to work out some alternatives.

The CHAIRMAN. That has been going on for nearly 200 years.

Mr. RYAN. Well, I share your frustration with this.

The CHAIRMAN. Now, you have suggested that this measure should not be considered because of budgetary constraints. I think that is the word you used.

Mr. RYAN. Yes, sir.

The CHAIRMAN. I am certain you realize that this is a legislative committee?

Mr. RYAN. Yes, sir.

The CHAIRMAN. And that this measure is an authorizing measure.

Mr. RYAN. Yes, sir.

The CHAIRMAN. We are not appropriating any money. We set forth in this measure what we think is correct, and the money committee will decide whether the money should be made available.

You don't think that these people deserve some sort of relief?

Mr. RYAN. I do think that they deserve relief.

The CHAIRMAN. Then why don't you come up with some alternative instead of spending all this time telling us how bad this is and the fact that we don't have money. You don't have to tell me we don't have money. We are well aware of that, sir.

Did your agency or the Government of the United States agree that irrigation systems should be built so that the tribes can make use of their lands? They lost the bottom lands. Isn't that correct?

Mr. RYAN. Yes, sir.

The CHAIRMAN. And so didn't you promise that irrigation systems be built?

Mr. RYAN. I am not sure in the original legislation what the promises were that were made with respect to irrigating the lands that were on the upland.

The CHAIRMAN. I can assure you that promises were made. Do you intend to carry out this promise?

Mr. RYAN. With respect to the development of irrigation under the Garrison Unit Diversion Reforumlation Act and consistent with whatever the studies are that are being done under that act, there will be some irrigation development. With respect to those acres of land that are signaled in the proposed legislation, the Administration opposes the development of that up until some studies have been done to determine whether or not they are irrigable.

The CHAIRMAN. Who will make that study?

Mr. RYAN. Well, the Department or the Bureau of Indian Affairs would have to do that.

The CHAIRMAN. When will you begin the study?

Mr. RYAN. I think that the study would begin based upon some agreement between the Interior Department and the tribes about the study, and it would have to be done within existing resources.

The CHAIRMAN. Well, I would hope that the trustee of Indian resources and the trustee of these people would go out of its way to carry out trustee responsibilities. In the outside world, I think the trustee in this case would have been charged with malfeasance or non-feasance.

Senator Burdick.

Senator BURDICK. Thank you, Mr. Chairman.

Since the enactment of Public Law 99-294, has any progress been realized between the tribe and the Bureau towards implementing the Indian irrigation and MR&I projects?

Mr. LEE. Senator, I am Haydn Lee from the Bureau of Reclamation.

Yes; progress has been made. We are currently working with three of the Garrison Reformulation Project tribes, very successfully with two and not quite as successfully with the third. We have transferred money to the tribes so that they can take part in the planning. We anticipate that as the planning goes along, they will actually do most of it through their resources or contract and will actually deal with the construction through their resources or contract.

Senator BURDICK. The committee is advised that the tribe and the Bureau are at an impasse on who should perform the planning responsibility on Public Law 99-294 Indian projects. Has this impasse been resolved?

Mr. LEE. The impasse has been resolved in the case of the Fort Berthold Three Affiliated Tribes and Fort Totten. In the case of Standing Rock, we still have a disagreement as to who has overall responsibility for it.

We have answered that previously, I believe, in a letter to the tribe. We would be happy to provide that letter for the record to the committee.

[Material to be supplied appears in the appendix.]

Senator **Burdick**. How long will that impasse last?

Mr. **Lee**. I don't know that I have an answer to that, Senator. We would like to get on and get things done.

Senator **Burdick**. I know, but when?

Mr. **Lee**. We have a memorandum of understanding that we gave to the tribe. They feel that they should have the final say. We feel that under the legislation and authority from Congress that the overall responsibility to ensure that a product that can be used by everyone, mainly the tribes, and that will be usable for them when they get through with the Project is something that was given to us under the reclamation law under which Garrison Reformulation was authorized.

Senator **Burdick**. If the tribe objects to the Bureau's conducting the planning for the development of the tribe's lands and water resources, how will the Bureau proceed?

Mr. **Lee**. At this particular point, what we have told the tribe is that we are allowing them basically to do the planning. Our insistence is that we have final oversight on whether that planning is adequate or not. That is our base position.

Senator **Burdick**. It does sound an awful lot like stalemate.

Mr. **Lee**. We hope it isn't.

Senator **Burdick**. But it is at the present time.

Mr. **Lee**. At this time, it appears to be.

Senator **Burdick**. What is the Bureau's position with regard to the Standing Rock Sioux Tribe's contracting under the authority of the Indian Self-Determination Act to provide planning for the tribe's MR&I irrigation needs?

Mr. **Lee**. At this particular point, our last indication was that that is fine with us. We will pass money through so they can have the planning done.

I would be happy to provide a further reply for the record on that, if you like.

Senator **Burdick**. Well, isn't there some way you can resolve this impasse? Can't you get into a room and decide it?

Mr. **Lee**. Last time, sir, I was out numbered.

No; I feel we should be able to resolve the impasse. It appears up to now we have not been able to, but I feel we should, because I don't think we are taking anything away from the tribe. I think all we are trying to do is say that what is completed will be actually usable for the tribe.

Senator **Burdick**. Well, you see, for us to provide some money for irrigation, you have to have something to indicate a plan of some kind.

Mr. **Lee**. Yes, sir.

Senator **Burdick**. And the more that is delayed, the more the money is delayed and the more the project is delayed. Doesn't that follow?

Mr. **Lee**. Yes, sir.

Senator **Burdick**. So, it seems to me we have to get together on a plan as soon as possible.

Mr. LEE. I concur.

Senator BURDICK. Well, I hope you and the tribe will sit down again and try.

Mr. LEE. Yes, sir.

Senator BURDICK. Thank you.

The CHAIRMAN. If I may once again make an attempt, I somehow sadly feel that when the dust settles, the Bureau will say we will sit down and determine by studies whether irrigation would be appropriate, and when the decision is made that irrigation would be appropriate, the Bureau will come before us and say since we don't have the funds, it is inappropriate.

Mr. RYAN. That appears to be what I am saying.

The CHAIRMAN. Then, may I ask you, as trustee, to provide us—by us I mean this committee—and through us to the tribes that are involved your alternative on how to address the injury that has been suffered by these Indians?

Mr. RYAN. I will attempt to do that.

The CHAIRMAN. The report was issued on May 23, 1986. It is now nearly 1½ years. Would 60 days suffice?

Mr. RYAN. I hope so. I can't speak to—well, the question was, can the Department provide the remedy?

The CHAIRMAN. Well, I hate to sit here day after day and receive testimony from your Bureau and your Department which analyzes and nit-picks all of these measures and saying section 1 paragraph A is not good and we are opposed to it or paragraph 2 is not good and we are opposed to it. What we want you to do is present something that you would support and let us nit-pick.

Mr. RYAN. That sounds fair, sir. I would like to say that I will try to do my best within 60 days. However, one of the things that is difficult to do is to imagine what the future of people should be without talking to them, and that is what is difficult to do within 60 days.

When the Department accepts the burden of imagining what the remedy or the future should be, in a way, that is a very difficult burden without talking to anybody, and if you are going to talk to people, it is going to take more than 60 days.

The CHAIRMAN. May I interrupt?

Mr. RYAN. Yes, sir.

The CHAIRMAN. Are you suggesting that these Indians who are sitting in the audience are refusing to sit with you?

Mr. RYAN. No, sir; I am not. My understanding of the previous meeting was that most of the attention was focused on the recommendations and on the direction in which the proposed legislation is going. I believe that in that context, it is difficult for people to focus on what some other things might be, particularly when their hopes and so forth are so closely attached to the proposed legislation.

The CHAIRMAN. Now, as you know, there was no proposed legislation at the time of the previous meeting, but in preparing your testimony today, did you meet with the Indians to confer with them?

Mr. RYAN. No, sir; I did not.

The CHAIRMAN. Then do you have to meet with them to come up with the alternative?

Mr. RYAN. I would think that I should, yes.

The CHAIRMAN. But you didn't think it was necessary in order to come up with the opposition to it.

Mr. RYAN. Well, for purposes of our appearance here today as a witness, it is for purposes of providing testimony on the proposed legislation and to give an update on what had occurred since the last hearing.

The CHAIRMAN. May I ask the leadership of the Indian tribes, are you unwilling to meet with officials of the Bureau?

Mr. LONE FIGHT. Mr. Chairman, my name is Ed Lone Fight, chairman of the Three Affiliated Tribes.

We have met with Mr. Ross Swimmer and Dr. Ryan on several occasions. We haven't really come up with an alternative plan as you are talking about. We haven't presented one. I have presented something, and we were subsequently turned down by the Secretary. I was talking about a public works project that was turned down by the Assistant Secretary.

At those meetings, we never heard the BIA's alternative remedy.

Thank you.

Ms. WILSON. Mr. Chairman, we are from the Standing Rock Reservation, and we represent I guess the people, and no one has contacted us. We are going to give testimony, and no one has met with us, not from JTAC or anyone else, but we have our thoughts, too, about how we think our land is kept, and when the dust settles, we would like to have people who lost and whose stories are in your booklet have something.

Thank you.

The CHAIRMAN. Madam, your name?

Ms. WILSON. I am Mary Louise Defender Wilson of Shields, ND.

Mr. WHITE LIGHTING. Mr. Chairman, my name is Allen White Lightning. I speak on behalf of the tribal council.

What Mr. Lone Fight has said relative to the meeting with the Bureau of Indian Affairs also applies with us. We did submit to the Assistant Secretary the proposal back in September 1986 which we made reference to in the last hearing on March 30. Those are some of the areas where we have made attempts to work with the Bureau.

Again, we are available to meet with the Bureau of Indian Affairs to try to discuss these and come up with some alternatives, as Mr. Ryan has suggested.

The CHAIRMAN. Well, Dr. Ryan, you have just heard them. They would be happy to meet with you.

Mr. RYAN. Yes, sir.

The CHAIRMAN. Would 60 days suffice?

Mr. RYAN. I hope so.

The CHAIRMAN. Then, in 60 days, we will have a hearing, and I would anticipate that by that time we would have the alternative of the trustee, and we would like to consider that alternative. I say this in all seriousness.

For too long, the trustee has acted in a strange manner. Instead of protecting the rights and the resources, it seems to be just the opposite. Let's change that. I think the time has come for change.

I thank you very much, sir.

Mr. RYAN. Thank you, sir.

The **Chairman**. Our next witness is the tribal chairman of the Three Affiliated Tribes of New Town, ND, the Honorable Edward Lone Fight.

We are pleased to have you with us today, sir, and look forward to your testimony. Before you begin, please introduce the people who are accompanying you today.

Mr. **Lone Fight**. Yes, Mr. Chairman. To my left is Ahmed Karoos.

Mr. **Karoos**. Mr. Chairman, I am chief economist for the Council of Energy Resource Tribes which is owned and governed by 43 Indian tribes.

Mr. **Lone Fight**. And we have our tribal attorney, Ray Cross with us and Ron Bilstein, engineer.

The **Chairman**. Please proceed, sir.

Mr. **Lone Fight**. Thank you.

STATEMENT OF HON. EDWARD LONE FIGHT, CHAIRMAN, THREE AFFILIATED TRIBES, NEW TOWN, ND, ACCOMPANIED BY AHMED KOROOS, CHIEF ECONOMIST, COUNCIL OF ENERGY RESOURCE TRIBES; RAY CROSS, COUNSEL; AND RON BILSTEIN, ENGINEER

Mr. **Lone Fight**. Before I begin with my testimony, I would like to recommend to the chairman and Senator Burdick that you pursue the legislative path rather than waiting for a report from the Bureau of Indian Affairs, because that might just stretch out for another 100 years or so, with all due respect.

My name is Edward Lone Fight. I am Chairman of the Three Affiliated Tribes from the Fort Berthold Indian Reservation.

Chairman Inouye and Senator Burdick, it is my pleasure to appear before your committee and to testify regarding the recommendations contained in the report issued by the Joint Tribal Advisory Commission, commonly referred to as JTAC, of May 23, 1986.

This committee has already heard, on March 30, 1987, the testimony of Mr. C. Emerson Murry and his colleagues who served on that Federal commission. Their testimony underscored the Three Affiliated Tribes' entitlement to as well as the need for just compensation due to their loss of over 156,000 acres of Indian lands, including all of their prime agricultural lands, as the site for the Garrison Dam and Reservoir. That dam is the main component of the massive Pick-Sloan project for the development of the Upper Missouri River Basin as authorized by the Flood Control Act of December 22, 1944.

This committee also heard tribal testimony on that day that portrayed in stark terms the human costs associated with the removal and dispersion of virtually an entire tribal people in order to make way for the Pick-Sloan project in the 1950's.

The Three Affiliated Tribes recognize that the Pick-Sloan project has, through its linked system of multi-purpose dams and reservoirs, resulted in substantial flood control, navigation, recreation, and power benefits to the people throughout the Missouri River Basin and beyond. Indeed, General Murry, in his prior testimony before this committee, estimated that the value of the benefits conferred by Pick-Sloan exceeded several billion dollars annually.

Yet, the Joint Tribal Advisory Committee found that the discrete group that had borne the brunt of the costs associated with the development of the Pick-Sloan project, the Three Affiliated Tribes, has yet to be justly compensated for their losses. That commission found that the Three Affiliated Tribes, consistent with the governing facts and law, were entitled to $178.4 million in order to replace the economic base of the Fort Bort Berthold Reservation that had been sacrificed to the project.

That commission was also cognizant of the historical fact that the Three Affiliated Tribes, before their removal, was the only economically self-sufficient agricultural tribe on the Great Plains.

The JTAC report emphasized the following major points that compelled the conclusion that Congress had not justly compensated the Three Affiliated Tribes for the loss of their reservation and its productive potential under the authority of Public Law 81-437:

First, Congress recognized from the outset through the "lieu lands" mandate to the War Department that the Three Affiliated Tribes were entitled to the replacement or substitute value of their economic base as a basis for just compensation.

Second, Congress, realizing that a suitable replacement reservation could not be provided to the tribes, undertook to provide the tribes with the cash equivalent of their economic land base on the principle of substitute or replacement value.

Third, Congress, because of budgetary and other pressures, failed to accord the tribes this standard of compensation under the terms of the final resettlement act, Public Law 81-437.

Fourth, the Three Affiliated Tribes' proposals to utilize the $7.5 million payable to the tribes as compensation under Public Law 81-437 for economic development purposes were frustrated by the Bureau of Indian Affairs' policies at the time. All of the funds were expended by way of per capita payments to tribal members to meet their subsistence needs and expenses after the removal.

Fifth, the Bureau of Indian Affairs was unable to meet the statutory mandate of reestablishing the tribal people on the residual reservation lands because those lands could not support that population and because sufficient funding was not available to reestablish those persons so relocated.

The Three Affiliated Tribes acknowledged, in prior testimony before this committee, that the JTAC recommendations regarding just compensation, the replacement of lost tribal infrastructure, and the limited development of the irrigation potential of the reservation would lay the basis for a genuine and sound tribal economic and social recovery plan. Let me emphasize again, here, today that the Three Affiliated Tribes agree with the JTAC report that there should be no per capita payments to any tribal members from just compensation awarded to the tribe.

The tribes also recognize their affirmative obligation to present to this committee a focused and realistic plan for the staged implementation of the JTAC recommendations on the Fort Berthold Reservation. No amount of money, unless it is wisely programmed for tribal needs over a substantial time horizon, will allow the recovery of the Three Affiliated Tribes from the impacts of the Garrison Dam.

Senator Inouye, you requested that the Three Affiliated Tribes, with the help of your committee staff, consult with the various responsible Federal agencies as well as other interested parties regarding the reasonable and realistic implementation of the JTAC recommendations. Your committee staff has been instrumental in arranging a large meeting at which the Bureau of Reclamation, the Bureau of Indian Affairs, the Western Area Power Administration, the Indian Health Service, and the Army Corps of Engineers met with tribal representatives.

The Three Affiliated Tribes, after that big meeting, has met several times with each of these Federal agencies. Unfortunately, I have to report that, except in the case of the Bureau of Reclamation, very little or no progress has been made toward the administrative implementation of any of the recommendations of the JTAC.

The virtually uniform response of these Federal agencies is that they lack the necessary legislative authority and the funds to carry out the JTAC recommendations. Only the Bureau of Reclamation has responded to the tribes' request for assistance in the future development of important water projects, particularly in the development of an adequate municipal, industrial, and rural system to protect critical health and environmental values on the Fort Berthold Reservation.

The Three Affiliated Tribes, in light of these responses and in consultation with your committee staff, has developed draft legislation for consideration by this committee. This draft legislation represents a careful and considered blending of a realistic amount of just compensation, the replacement of critical elements of lost tribal physical and social infrastructure, as well as limited water project development on the Fort Berthold Reservation.

Such a judicious blending of the recommendations will set the stage for the Three Affiliated Tribes' economic and social recovery from the impacts of the Pick-Sloan project on the Fort Berthold Reservation.

The Three Affiliated Tribes will realize four goals from the Congressional enactment of this draft legislation: first, the restoration of tribal community well-being; second, the assurance of tribal governmental integrity and stability; third, the eventual achievement of economic parity with the non-Indian communities surrounding the reservation; and, fourth, the elimination of dependence.

I will briefly address the purpose and intent of the three distinct titles of this draft legislation.

Title I, Just Compensation, declares that the Three Affiliated Tribes are entitled to $178.4 million in just compensation, consistent with the JTAC report, for the Federal taking of over 156,000 acres of reservation lands, including thousands of acres of prime agricultural bottom lands, as a site for the Garrison Dam and Reservoir. That title also establishes in the United States Treasury an account in the above referenced amount known as the Three Affiliated Tribes Economic Recovery Fund.

Appropriations to that account are authorized in the principal amount of $3.568 million plus 4 percent interest on the unpaid balance on an annual basis for a period of 50 years beginning with fiscal year 1989.

However, at this committee's earlier suggestion and in consultation with committee staff, the Three Affiliated Tribes have proposed an alternative financing method for the payment of just compensation of the Three Affiliated Tribes that would be in lieu of the above identified appropriated account.

This alternative method provides for the financing of just compensation to the Three Affiliated Tribes through utilizing receipts available from the integrated programs of the Eastern Division of the Pick-Sloan Missouri Basin Project. This alternative financing method has been structured with two purposes in mind: first, that the responsible repayment source as an equitable matter for retiring the just compensation debt owed to the Three Affiliated Tribes should be the receipts obtained by the Pick-Sloan project.

By this method, the Three Affiliated Tribes would participate for the first time in the revenues derived by the Pick-Sloan Missouri Basin project through the use of its assets.

Second, the tribes understood that the repayment of the just compensation debt out of these receipts can be achieved especially in light of recent Congressional changes in the features of the Pick-Sloan project.

This draft language would further require the Secretary of Interior to make disbursements from this account to the Three Affiliated Tribes consistent with a tribal economic recovery plan approved by the Secretary. Such a plan would prohibit per capita payments to tribal members and ensure that the scheduled compensation payments are directed to long-term economic recovery projects on Fort Berthold.

However, let me emphasize, Mr. Chairman, that the Three Affiliated Tribes are offering this alternative financing method only for this committee's consideration. The Just Compensation declared in title I would continue to be a debt of the United States owed to the Three Affiliated Tribes regardless of possible future impairment of this alternative financing method for whatever reason.

Title II concerns the replacement of critical tribal and physical infrastructure.

Title II authorizes the replacement of certain critical elements of tribal physical and social infrastructure lost to the creation of the Garrison Dam: a tribal health care facility, school dormitories, a bridge for access between the new tribal communities, and adequate secondary access roads. Replacement of these facilities will allow the tribes to regain a level of services and integration similar to that enjoyed before the flooding of their reservation and the dispersion of the tribal people.

This title also recapitulates the statutory purpose and intent of Public Law 81-437, as yet unrealized, to reestablish the tribal people fully in their new homes and environment.

Title III concerns the development of MIR and irrigation potential.

Title III authorizes the future irrigation development of 30,000 acres of reservation lands in order to replace the tribes' irrigable land base that was lost to the Garrison Dam. This title also calls for the treatment of on-farm cost, land acquisition cost, and operation, maintenance, and replacement cost to be treated as deferrable project costs pursuant to the Leavitt Act.

The tribes recognize and Title III provides that the project, if authorized, should not proceed until it is technically feasible to do so.

Mr. Chairman, the Three Affiliated Tribes have sacrificed a great deal for the success of the Pick-Sloan Missouri Basin Project, but they are ready, with your assistance and that of Senator Burdick, to go forward with a reasonable legislative plan that will ensure the economic recovery and the return to independence of the tribal people of the Fort Berthold Reservation.

This concludes my testimony, and I would be happy to respond to any questions you may have.

Thank you.

[Prepared statement of Mr. Lone Fight appears in the appendix.]

The CHAIRMAN. I thank you very much, Mr. Chairman.

You were here to listen to the testimony presented by Mr. Clagett of WAPA. Was it consistent with your earlier discussions with WAPA?

Mr. LONE FIGHT. Yes; the part that under current and future plans and methods would be consistent.

The CHAIRMAN. My suggestion that the Bureau of Indian Affairs submit to the committee an alternative in 60 days was based on the following: you indicated you would like us to proceed with the bill.

Mr. LONE FIGHT. Yes.

The CHAIRMAN. We will be proceeding with the bill, but nothing will happen this year. The Congress will be involved very heavily with matters relating to the budget and appropriations, and we should be out of session, hopefully, by the middle of December.

I think the schedule would indicate that we will return on the January 4 or 5 but then go into recess until January 19. If history repeats itself, very little is done during the month of January.

So, if we do have any action, it will be sometime in February, and that is why the 60 days.

At this juncture, I have been asked to announce that the Bureau of Indian Affairs would like to meet with the leaders of both tribes on Wednesday, December 2, in Secretary Swimmer's office. The meeting will be with Secretary Swimmer to discuss issues and matters relating to what is before us this afternoon. Apparently, Secretary Swimmer wishes to use this meeting as a background for the preparation of his report.

So, may I suggest that the leaders of the two tribes call upon the Secretary's office to let them know whether you will be in attendance for that.

Mr. LONE FIGHT. We will be in attendance. We are glad to hear that.

The CHAIRMAN. Senator Burdick.

Senator BURDICK. Mr. Chairman, these gentleman have testified to a very sorry situation. The development of the dam on the Missouri River caused Indians to be taken up and literally moved from one place to another.

Their homelands were abandoned, and they were pushed over into another entirely foreign area to them. When he talks about just compensation, the facts are that, through finagling, arm-twisting, or whatever you want to call it, they got the Indians to sign the agreement which was completely under duress.

I think this committee has an opportunity now to right a wrong, because that was not a voluntary transaction at all. What Chairman Lone Fight says is absolutely correct. Their finest land was taken. I know the land. It is along the Missouri River and what we call the bottom lands. It is excellent land, and full compensation was not given.

So, I think they have an excellent point here, and we ought to take it and do justice in this particular area.

Now, I have a question. What has been done in the development of the MR&I irrigation system? Have you made any plans? Have you done any preliminary work? What have you done on irrigation?

I see in your statement the 30,000 acres for the Three Affiliated Tribes. What have you done?

Mr. Lone Fight. We have established our tribal priority, but I am going to have our engineer respond to that question, Senator.

Senator Burdick. All right.

Mr. Bilstein. Senator Burdick, my name is Ron Bilstein. I am an engineer who has been working on the reservation over the last 10 years and was involved all the way through the GDUC process through the JTAC process. I would like to speak to the two areas that you brought up.

First of all, relative to the irrigation projects, we have selected a 30,000 acre base for study. That study base was delineated and presented to the Bureau of Reclamation. Field studies on that study base were completed last fall. The findings of irrigability should be presented to the tribe by the first of the year or shortly thereafter.

At that point in time, we will be able to evaluate the configuration of our project.

Relative to the municipal, rural, and industrial systems, a needs analysis has been completed by the Billings Area Office of the Bureau of Reclamation, and based on their preliminary plan formulation report, it basically shows that a reservation-wide municipal, rural, and industrial system of the magnitude requested by the tribes in the JTAC report is in fact needed.

The next step is to go about the business of selecting the phase one development area to use the monies appropriated under the Garrison Diversion Unit Reformulation plan and then follow that up with additional appropriations for the entire reservation.

The definite plan report for the phase one should be done by the end of March. This year, hopefully, private contracting to do the design will follow shortly. Final design is to be done in fiscal year 1988 and 1989. Construction of the phase one development is to be done in fiscal year 1989 and 1990.

Mr. Cross. I might add, Senator, if I can take a moment, that there will be a need for a substantial revision in the law in order to make sure that irrigation, as an appropriate way to compensate or partly compensate the tribe is adequate. Right now, as the law stands now, there is a strong possibility that, for one instance, Secretary Swimmer may be right.

Without changes in the law as requested by the tribe in the draft legislation, there is a strong danger that irrigation would be a burden and not a benefit to the tribal people because of the fact that you would have a standard Bureau of Reclamation project built without any assurance that the tribal people could afford to carry the very expensive OM&R obligations and that they could afford to acquire the very expensive sprinkler systems that are required for this type of irrigation.

In order to ensure that irrigation, both economically and technically, is a benefit to the tribes, we would like to proceed very carefully in that area. For once, we agree with Secretary Swimmer that there should be careful and deliberate study.

That is why we feel that irrigation alone, as called for by Public Law 99-294, the Garrison Reformulation Act, does not adequately address the needs of the tribe and may not adequately address the needs of the tribe in the future to replace and compensate them for the losses associated with the Garrison taking.

Thank you, Senator.

Senator BURDICK. In either of the Interior Committees of the House or the Senate, has there been any authority for planning money or anything like that so far?

Mr. CROSS. There have been small amounts of planning monies made available, but because of unfortunate bureaucratic red tape that you are very familiar with, Senator, it has been a very difficult time to coordinate the work between the Bureau of Reclamation and the BIA.

We spent a lot of dead time basically trying to get BIA to cooperate with us and to cooperate with the Bureau of Reclamation. There are small amounts of planning monies available, perhaps not enough, but we are going to proceed to do the best plan we can for MR&I.

Senator BURDICK. What about authorization for planning? I probably should know this, but I am not on the Interior Committee.

Mr. CROSS. I think there are adequate planning monies available now in the Bureau of Reclamation budget. Let me emphasize again that the tribes' position is that they want to emphasize municipal, industrial, and rural because, as you know, Senator, the ground water that they rely on now is not very good water. It is heavily mineralized and dangerous to the tribal people that have various health problems.

So, we would like to proceed on a fast track with MR&I and make sure that irrigation is a beneficial project and is an appropriately designed project for the tribal people. That is why we are very careful with the irrigation features as we point out in the draft legislation and also in the testimony today.

Senator BURDICK. That is why I ask the question. These can go along a parallel track once we get moving. So, I am just wondering what more we need to do in the Interior Committees.

Mr. CROSS. We would like to thank you, Senator. As you know, one of the needs is that the Bureau of Reclamation is now emphasizing the western water projects such as the Central Arizona Project and Central Utah Project. There is a danger that neither the tribes nor the State of North Dakota will be moving along any track with respect to irrigation and irrigation development unless there is more funding available in fiscal year 1989 for Garrison.

That is why we will appear again before the appropriate committees at the right time to make sure that happens, but it has been a struggle, as you know, Senator, to get Garrison back on track, and the Indian people appreciate your efforts in that area. We would like to keep moving with Garrison, and I know the people of North Dakota would, too.

Thank you, Senator.

Senator BURDICK. Thank you.

The CHAIRMAN. Senator Burdick is the one who introduced me to this problem, and it was at his suggestion that this matter was brought to the attention of the committee and hearings were held. He has done a good job in setting forth the terrible toll that you have had to pay for this. I must apologize that I sometimes get angry, but I think there is justification for one to get angry.

Thank you very much.

Mr. LONE FIGHT. Thank you.

Mr. CROSS. Thank you, Senator.

The CHAIRMAN. Our next witness is the supervisor of reservation resources of the Standing Rock Sioux Tribe of Fort Yates, North Dakota, Allen White Lightning.

Welcome, sir. Please identify your colleagues.

Mr. WHITE LIGHTNING. Yes, sir; on my left here is Mr. Robert McLaughlin who is the president of the Robert McLaughlin Company and has been engaged by the tribe to work with us on the economic loss report. On my right here is Mr. Mike Watson who is with the Technical Services Corporation from Montana to work with us also on the report that we would be providing you.

The CHAIRMAN. Will the representatives of your tribe be available for the meeting with the Assistant Secretary, Mr. Swimmer, on December 2?

Mr. WHITE LIGHTNING. Absolutely.

The CHAIRMAN. Would you call his office to indicate that?

Mr. WHITE LIGHTNING. We will, Mr. Chairman.

STATEMENT OF ALLEN WHITE LIGHTNING, SUPERVISOR, RESERVATION RESOURCES, STANDING ROCK SIOUX TRIBE, FORT YATES, ND, ACCOMPANIED BY ROBERT McLAUGHLIN, PRESIDENT, McLAUGHLIN CO., AND MIKE WATSON, TECHNICAL SERVICES CORPORATION OF MONTANA

Mr. WHITE LIGHTNING. Mr. Chairman, I, as the Supervisor of Reservation Resources, have been designated by the tribal Chairman, Mr. Murphy, and the tribal Select Committee members—Mr. Charles White, who is the Chairman of the Economics Committee; Mr. Earl Silk, Chairman of the Judicial Committee; and Mr. Ralph Walker—to present the testimony on behalf of the tribe.

Mr. Chairman, with respect to the BIA's testimony, we are not prepared nor able to support their positions for more studies, as we have already been studied to death, as you well know, relative to the practicably irrigable acreage.

In reference to the Bureau of Reclamation, we have had meetings with the Commissioner of Reclamation, most recently last week. I believe pressures from the planning office in Billings are still maintaining that they were going to do the planning on behalf of the tribe. This is contrary to what Mr. Lee has informed the committee.

Mr. Chairman and members of the committee, we appreciate the opportunity to place before you the proposed free-standing legislation of the Standing Rock Sioux Tribe's Restoration and Reconstruction Act of 1987 which we propose be introduced immediately.

The purpose of this draft bill is to provide the tribe's views regarding implementation of the recommendations of the final report of the Garrison Unit Joint Tribal Advisory Committee. When the final JTAC report was issued on May 23, 1986, the Standing Rock Sioux Tribe was assured of cooperative congressional action to resolve the committee's recommendations. This hearing is evidence of such cooperation which we trust will continue through enactment of legislation like that which the tribe proposes.

Since our last appearance before this committee on March 30, 1987, we have had numerous meetings with the Bureau of Reclamation, Corps of Engineers, Western Area Power Administration, as well as the Bureau of Indian Affairs addressing those JTAC recommendations that could be resolved administratively. However, Mr. Chairman, the tribe finds that the Federal Government is willing to handle few, if any, JTAC recommendations without further action by Congress.

Even with regard to currently available planning funds for the irrigation and municipal water development, the Bureau of Reclamation refuses to allow the tribe to contract to undertake the planning for its own projects. We make reference to Public Law 93-638 which we have initiated as a contract through the Bureau of Indian Affairs.

The tribe is fully capable of planning those projects as it has done with previous projects at less cost and in a quicker time-frame than the Bureau of Reclamation. We have demonstrated this capability in the development of our existing irrigation units which the tribe planned and constructed under Public Law 93-638 contracts with the BIA.

Nevertheless, the Bureau of Reclamation continues to oppose the tribe once again as it did under Public Law 85-915. We urge the committee's assistance in resolving this impasse on behalf of the tribe.

Mr. Chairman, all features identified by the Standing Rock Sioux Tribe in its March 30, 1987 testimony are still supported by the tribe wholeheartedly, which includes the opposition to any per capita pay-outs. In addition, we note that the communities of Wakpala, Little Eagle, and Bullhead, South Dakota, all-Indian communities that are located on our reservation adjacent to Lake Oahe and the Grand River, are still situated within the flood plain area and are seriously flooded almost yearly, causing considerable injury. This egregious situation must be resolved.

The draft legislation covers the following matters:

Relative to section 3, Fish and Wildlife, the United States Fish and Wildlife Service has a spawning station on the reservation at the Grand River adjacent to Lake Oahe. This provides fish for sportsmen elsewhere but not for tribal fishermen on the reservation.

The draft bill calls for the tribe to receive its fair share of the fish spawned at this station on the reservation.

The tribe proposes that the bill clarify that the tribe has exclusive jurisdiction over hunting, fishing, and boating within Lake Oahe on the reservation; however, we further propose that a joint commission be initiated between the tribe and the States to provide oversight responsibilities.

These resources must be properly managed so the treaty and statutorily protected rights of Indians can be protected and enhanced. Indian hunting and fishing has great cultural significance, and we have carefully protected these resources for hundreds of years. Today, hunting and fishing by non-Indians on our reservation is extensive and has a direct and significant impact on the tribal right to fish.

Therefore, the legislation would clarify the tribe's right to regulate these matters in the taking area which both Federal and State courts have held remains part of the reservation. The tribe's goal is to encourage hunting and fishing on the reservation in a manner that protects tribal subsistence rights and conserves the resources for future generations.

We note that we continue to meet with State fish and game officials to discuss our mutual interests.

Section 3 further addresses the development of shoreline recreation potential. Development of the reservation's shoreline has long been a tribal objective. With over 93 miles of shoreline within the boundaries of the reservation, the tribe recognizes the potential economic opportunities shoreline development represents.

In 1971, at the request of Standing Rock, the BIA conducted an inventory of potential recreation sites along the river, identifying 31 sites. Although the tribe would like to see all of the sites developed, we realize that this may not be immediately feasible. However, in the interests of facilitating shoreline recreation development, the tribe has identified six sites that are ideally suited for immediate development.

These sites are Yellow Hammer Bottom in the Cannonball District, North Cannonball District; Walker's Bottom, South Cannonball; Porcupine Creek Bay; Four Mile Creek, Fort Yates District; Kenel Bay Area, Kenel District; and Wakpala District.

These specific sites were chosen because, first, they all have gravel roads leading directly to the shoreline; second, they are suitable for development; and, third, they are situated near deeper water to permit fishing, swimming, and the launching and docking of boats.

Presently, there are only three areas within the reservation boundaries that can be classified as recreational areas. The first, located in Fort Yates, is a primitive site consisting of a boat ramp, portable boat dock, rest rooms, and waste disposal receptacles.

The second, located on the Grand River between Mobridge and McLaughlin, South Dakota, is more representative of a recreation area. However, it is under-utilized due to extreme lake fluctuations.

The third, Jed's Landing, north of Mobridge, South Dakota and within the reservation boundaries, is a private non-Indian commercial concession. The latter is what the tribe envisions as a full service water based recreational facility.

With Congressional authorization, the Army Corps of Engineers and the tribe can begin to finalize design specification and cost estimates for the sites identified above.

Relative to irrigation facilities, the tribe supports the reasonable, incremental development of its irrigable lands. The draft legislation calls for the construction of four small new units with a total new irrigated acreage of 3157 to be added to the tribe's two existing units which total 2325 acres. This development was recommended by the JTAC report. This development, however, is a small part of the tribe's irrigable land base.

As you know, the Bureau of Indian Affairs has purchased services to identify specific irrigable lands on the reservation. Under the Morrison-Moirity Part II report, there was identified 303,600 acres of irrigable acreage on Standing Rock.

The tribe, if it is to expand its agricultural development, must provide a planned, coordinated approach. Irrigation development is needed by the tribe. We recognize that without sufficient equity injections into any developmental project, there will likely be problems.

Therefore, we believe that Congress should recognize that providing just compensation from power revenues as described below is essential to the success of irrigation and other forms of development at Standing Rock.

With respect to section 5 relative to power, the tribe firmly believes that the economic viability of the reservation can be assured in the future by participation in the electrical hydro-generation from the Missouri River Basin Program authorized by Congress in the 1944 Flood Control Act.

In 1958, the United States took 56,000 acres of land owned by the Standing Rock Sioux Tribe and its members. The tribe was compensated for those lands at values appraised for grazing, wood cutting, and other purposes. But the value of our lands as a power site was great, and the value of the river bed, for which we are informed no compensation was received, remains great.

The Western Area Power Administration, managers of the Missouri River Basin hydroelectric and transmission system, uses revenues received from the sale of electricity to pay for the costs of construction, operation, maintenance, and replacement of the power investments. Additionally, revenues are used, in part, to repay the cost of the integrated projects not originally contemplated in the Missouri River Basin Program. Finally, the revenues pay back approximately 85 percent of the costs of the Missouri River Basin Program irrigation construction.

In the near future, electrical revenues will have paid the cost of investment by the United States in the power system. With the recovery of power investment, future electrical revenues will be directed to the repayment of existing irrigation construction that is almost exclusively non-Indian.

WAPA has projected the development of several million additional acres of irrigation construction and has planned to use future electrical revenues to repay those costs. It is clear, however, that future irrigation development to the levels contemplated by WAPA are unrealistic and that future revenues from the sale of electricity can be directed to other purposes if authorized by Congress.

The tribe respectfully petitions this committee to consider legislation that would direct WAPA to allocate a portion of the hydropower energy to the Standing Rock Sioux Tribe and other tribes affected by the development of the Missouri River Basin Program.

To assist the committee, the tribe urges that WAPA be authorized and directed to perform power repayment studies with full participation by Standing Rock for the purpose of determining a basis for power allocation to Standing Rock and the effect on power and irrigation repayment. The tribe is confident that such an investigation can provide the ways and means for the Standing Rock Sioux Tribe to receive an allocation of Federal energy with minimal effects on the WAPA electrical repayment structure.

An allocation of electrical energy will provide financial resources for the future development of our land, water, and human resources. We can plan our future with the certainty of an economic base.

The petition the tribe makes is one of the means of accomplishing the recommendations of JTAC.

First, an allocation of energy will put to use for the benefit of the Standing Rock Sioux Tribe part or all of our water rights reserved for the irrigation of as many as 303,000 acres of irrigable lands within the reservation. The use of undeveloped irrigation water requirements for production of electrical energy will preserve and protect our water rights.

Second, the sale of electrical energy allocated to Standing Rock will provide a source of financing necessary to compensate the tribe for damages identified by JTAC.

Finally, an allocation of electrical energy would better reflect the fair value of the lands taken by the United States for the construction of Oahe Dam and Reservoir than the compensation received by the tribe and its members based on appraisals for grazing, agriculture, and wood cutting. The value of the land as a power site was never evaluated in the appraisals. Moreover, the tribe was never compensated for the value of the land beneath the Missouri River.

The tribe urges Congressional authorization of an allocation of Federal power managed by WAPA based upon an investigation of the WAPA energy supply and financial structure as reviewed above. For the investigation to have meaning, the Standing Rock Sioux Tribe respectfully requests full participation. The results of the investigation will assist in the formulation of specific provisions of legislation to implement the JTAC recommendations.

Continuing with section 5, the draft bill provides just compensation for a total of $365,254,283 as amortized to 1987. This amount is derived from the amount of economic loss calculated at $59,083,572 in 1958 dollars, amortized to the present utilizing an average six-month treasury security rate of 6.52 percent.

These power revenues shall provide compensation for economic loss resulting from the construction of the Oahe Dam and shall be paid to the Standing Rock Sioux Tribe over a stream of years from a Treasury account for the following reasons:

The tribe gave up, under the threat of a Fifth Amendment taking, its best and most productive lands after a protracted effort to keep these lands from the Corps of Engineers. In this process, the 1868 Treaty provision requiring three-quarters adult male signatures before any treaty land cession could take place was violated by the Government. The tribal homelands in question, 56,000 acres, were to be used for the impoundment needed for the Oahe Reservoir.

This public works project greatly benefited certain sectors of society. The same project greatly cost and continues to cost the Standing Rock Sioux Tribe. This cost is calculated in terms of economic loss during the life span of the Oahe Dam project. Tribal economic resources which have never been paid have been foregone by the tribe.

The Standing Rock Sioux Tribe has taken a position that the costs for economic losses are and have always been legitimate project costs and should be viewed as such. Therefore, it is not inconsistent that just compensation be paid the tribe from hydropower revenue as repayment costs assigned to hydropower.

These costs should have been included in the original costs paid to build the dam. In other words, the low cost power rates of today's Pick-Sloan power was achieved by a project which never paid all original costs for its construction.

Since it was the economic base which the tribe lost, it will be an economic base that the tribe will reestablish with just compensation payments. The tribe has opposed per capita redistribution of any payment as non-productive and even, in some cases, destructive.

It is the tribe's intention that compensation will be programmed to generate investment capital for productive enterprises as well as investments in human capital such as education and socially worthwhile programs.

Tribal equity participation in the proposed American Indian Development Finance Institution, S. 721, could also be financed through the tribe's redevelopment program with JTAC funding. In this way, the tribe may begin to diminish the dependency society which, in part, resulted from the taking of the tribe's most productive economic lands for the Oahe Dam project.

To replace the economic base lost, the tribe will establish with the compensation funds a long-term economic revitalization and development institution. This institution will be a serious investment-driven project for economic development.

Of direct benefit to the United States from the tribe's revitalization project will be, over the long run, a beneficial decrease in United States welfare transfer payments. The increase in Federal taxes, coupled with the decrease in welfare payments, can be greater than the net increase in a household's income resulting from work created by productive investments.

On section 6 regarding the municipal, rural, and industrial water service, the tribe has long lacked adequate, safe water supplies for our communities. In many cases, the present drinking water sources do not meet Safe Drinking Water Act standards.

Therefore, the draft bill calls for development of municipal, rural, and industrial water systems, as approved by the tribe, for our reservation.

Currently under Public Law 99-294, the Garrison Diversion Unit Reformation Act of 1986 provides that "The Secretary is authorized and directed to construct, operate, and maintain such municipal, rural and industrial water systems as he deems necessary to meet the economic, public health, and environmental needs of the—Standing Rock—Indian Reservation."

However, the Bureau of Reclamation has not been cooperative in furthering this authorization.

The Tribal Council of the Standing Rock Sioux Tribe has determined that the water supply of the Cannonball Community in the northeast quadrant of the reservation is the first priority for MR&I development provided by Public Law 99-294. The Standing Rock Sioux Tribe completed preliminary planning for a community water supply in Cannonball in 1985. It is proposed to upgrade the preliminary planning for the Cannonball community.

After planning efforts for the Cannonball community water supply have been concluded, the funding needs for additional construction will be determined. It is understood that approximately $8 million has been allocated to the Standing Rock Sioux Indian Reservation as authorized under Public Law 99-294.

We anticipate a need of $350,000 to complete the remaining MR&I planning and design work for this reservation with the $8 million authorization being used partially to fully construct the Standing Rock Sioux Tribe Rural Water Distribution Project.

Relative to section 7 on excess lands, the draft legislation calls for return to the tribe of reservation lands above 1620 feet elevation which were taken by the Corps of Engineers for the Oahe project. The tribe is informed that the Oahe Dam itself would not contain waters above this level. Therefore, lands above this level are truly in excess of any reasonable view of what is needed for the project.

The draft legislation would still provide the Corps with a flowage easement over all lands in the current taking area, but the restoration of these lands to the tribe would mean they could be effectively used for the benefit of the tribe which is not now the case.

In 1985, the Corps of Engineers completed an Executive Order 12112 Survey and determined that there are no excess lands at Lake Oahe. The tribe believes that determination was erroneous.

The tribe has identified 19,609.82 acres of lands in the taking area on the reservation above the 1620 foot elevation level. These lands are unused and unneeded for project purposes.

The lands lie between Cannonball, North Dakota and Mobridge, South Dakota. The Corps of Engineers has indicated these lands are needed for recreation and fish and wildlife purposes. The Corps does not even claim they are needed for flood control purposes.

Certainly, the tribe is better suited than the Corps to determine the appropriate recreation and fish and wildlife uses on the reservation. These lands must be returned.

To locate the excess land in the taking area, the tribe used Geological Survey maps showing elevations and the Corps line as recorded by the Bureau of Indian Affairs. The acreage was determined by using a dot matrix method and a planimeter. This is a method commonly used by Land Operations, Bureau of Indian Affairs to measure acreage.

The majority of these 19,609 acres above the 1620 foot elevation are good range land and farm land, sufficient to support 817 head of cattle year long if it were used for grazing. These lands could provide substantial income to the tribe if used for grazing or growing crops.

Under the section 14 protection of reserved water rights, the draft bill provides that nothing in the act shall be deemed to diminish the tribe's reserved water rights. When the Great Sioux Reservation was established on April 29, 1868, enough water was reserved to fulfill the purposes of the reservation.

Six of the ten JTAC recommendations relate to, concern, or affect the use of the tribe's reserved water rights. Moreover, the basis for additional financial compensation is, in part, based on the tribe's water rights.

With increasing competition for a limited source of water, the Missouri River, the tribe finds itself in a position to seek Federal protection of all present and future uses of water. Without this protection, the tribe ultimately will be placed at the mercy of State courts. State courts, historically, are not sympathetic to or obligated to protect Indian Winters Doctrine water rights.

All interests—Federal, tribal, State, and private—recognize the value and importance water plays in economic development. Most recently, the Western Governors Association adopted Resolution 87-006 which addresses Indian water rights. While the tribe recognizes their concerns and interests, the seniority of Indian water rights must prevail.

There are two primary conflicts. The first is with the Secretary of the Interior who has refused and failed to exercise the Federal Governments trust responsibility to Standing Rock in regard to protecting the tribe's water rights from both Federal and State encroachments. The second major conflict is with the States who misinterpret and act contrary to established principles enunciated under the Winters Doctrine, to the detriment of the tribe. These conflicts are inseparable.

In that regard, the Secretary of the Interior has, first, failed to exercise his trust responsibility and thereby placed the tribe in and at the mercy of State courts; second, permitted the violation of the tribe's vested property rights in water; third, cooperated with States and other interests in developing criteria to constrict the uses of Indian water rights; fourth, subverted Indian water rights to State jurisdiction for the purposes of adjudication; fifth, without authority from the tribe, proceeded to formulate policies that are arbitrary, capricious, and illegal; sixth, forces legal and technical representation on the tribe; and, seventh, prevented the tribe, without basis, to implement the tribe's Water Code by failing to lift a moratorium on tribal water codes imposed in the early 1970's.

The most logical methods to protect our water rights are:

1. Hold harmless the application of the McCarran Amendment, 43 U.S.C. 666, as it pertains to Indian water rights adjudications regarding the Standing Rock Sioux Tribe;
2. Allow the tribe to implement its tribal Water Ordinance adopted in 1983; and
3. Allow the tribe to hire its own technical experts and legal representation in all matters pertaining to Indian water rights.

Mr. Chairman, the tribe appreciates this opportunity to testify on these important matters. We look forward to working with the committee on this proposed legislation.

We thank you, Mr. Chairman.

[Prepared statement of Charles W. Murphy, Chairman, Standing Rock Sioux Tribe appears in the appendix.]

The CHAIRMAN. I thank you very much.

It has been suggested that the tribes have been compensated. How much did the Government provide the two tribes?

Mr. WHITE LIGHTNING. I would like to defer to Mr. Robert McLaughlin to respond to that, Mr. Chairman.

Mr. McLAUGHLIN. To the Standing Rock Sioux Tribe, compensation for actual valued land at $36 per acre plus indirect damages amounted to $5,251,553 in 1958.

The CHAIRMAN. How was this arrived at?

Mr. McLAUGHLIN. It was arrived at by a market value appraisal by the Corps of Engineers in the amount of about $1.9 million and then indirect damages assessment by the Bureau of Indian Affairs of just over $3 million.

The CHAIRMAN. So, the Bureau determined it and the Corps of Engineers determined that.

Mr. McLAUGHLIN. That is correct.

The CHAIRMAN. It was not an independent appraisal.

Mr. McLAUGHLIN. The Corps of Engineers did hire an independent appraiser in 1950, and this was a firm out of Denver Colorado. They assessed the value and they appraised it according to fair market value.

The CHAIRMAN. Were you satisfied with the results?

Mr. McLAUGHLIN. The tribe testified for 8 years in opposition to that result before Congress.

The CHAIRMAN. Did you accept the compensation?

Mr. McLAUGHLIN. Did the tribe accept that compensation?

The CHAIRMAN. Yes.

Mr. McLAUGHLIN. A bill was passed by Congress and signed by the President, and four signers of the tribal government did sign and accept this.

I might add that a violation of the 1868 Treaty occurred that was discussed in the hearing record during this process that the three-quarters adult male signatures were never achieved as required by treaty. That is a violation of that Treaty, a unilateral United States violation.

The CHAIRMAN. I am certain you were in the audience when a statement was made by a member of the committee, Senator McCain, in which he questioned the justification for the two sums, a total in excess of $700 million.

Mr. McLAUGHLIN. Yes.

The CHAIRMAN. Senator McCain is a very important member of this committee who has been long supportive and interested in matters relating to Indian affairs. Accordingly, may I suggest to you that you strengthen that portion of your argument on compensation.

I have been following your testimony and reading your testimony, and I would suggest you expand upon your justification for the amounts of compensation that are proposed.

Mr. McLaughlin. Mr. Inouye, could I comment on that?

The Chairman. Sure.

Mr. McLaughlin. We at Standing Rock did do a detailed evaluation of economic loss, and I had this before me last time, and I have it again. We covered, in detail, the timber losses, the natural products losses, the wildlife losses, agricultural losses, labor losses, damages to water, damages to land, loss of the river bed, damages to roads, damages to housing, and other damages in our original study.

This study that we did do was not attached as an appendix to the JTAC final report, and it seems to me that the Bureau of Indian Affairs, the Department of the Interior, as well as maybe some members of the committee have not had access to the more complete analysis. And we have not heard that they had any complaints on the merits of that analysis.

We would be delighted to sit down with any member of the Department of the Interior or any member of your committee to explain how we arrived at the calculation of economic loss.

The Chairman. I would suggest that in your discussion with Secretary Swimmer on December 2 that matter be brought up and discussed.

Mr. McLaughlin. Certainly.

The Chairman. At this juncture, the draft legislation submitted by your tribe and that of the Three Affiliated Tribes will be made part of the record at the appropriate place in the record so that the record will be complete.

Senator Burdick.

Senator Burdick. I have no questions, but I congratulate the witnesses on a good statement.

The Chairman. I thank you very much, sir.

Mr. White Lightning. Thank you, Mr. Chairman.

The Chairman. Our final witness this day is Ms. Mary Louise Defender Wilson, a member of the Standing Rock Sioux Tribe.

STATEMENT OF MARY LOUISE DEFENDER WILSON, ENROLLED ON STANDING ROCK SIOUX RESERVATION, ACCOMPANIED BY REGINALD BIRD HORSE

Ms. Wilson. Thank you, Chairman Inouye and Senator Burdick.

I would like to introduce Mr. Reginald Bird Horse who is here with me. He is one of the people whose stories is told in the booklet, "The Taken Land," and he is here primarily to answer questions that you might have.

The Chairman. I presume that your associate is a member of the Standing Rock Tribe?

Ms. Wilson. Mr. Chairman, I guess we are here to talk about that very serious matter, too. We are Dakota and Lakota people, members of what was once the Great Sioux Reservation. The divisions came in 1889 with these reservations. Many of us who consider ourselves to be traditional people still realize that all of these people on these other reservations are relatives and we feel that way toward them.

Mr. Bird Horse has lived his entire life on Standing Rock Reservation. He just happens to be enrolled on a reservation to the south of us. His father is a person whose story is told in that booklet.

For that reason, I feel that what he has to say is important for this committee to be aware of.

The CHAIRMAN. Oh, I have no objection. I just wondered for purposes of identification.

Ms. WILSON. I am sorry. I didn't mean to go into a long explanation.

The CHAIRMAN. Senator Burdick.

Senator BURDICK. Mr. Chairman, this is an unusual moment. Mary Louise is a former employee of mine.

Ms. WILSON. From 1961, sir.

Senator BURDICK. That isn't all. She was former American Indian Miss America, I want you to know, and we are certainly glad to have her here.

Do you have a prepared statement?

Ms. WILSON. Yes; we do, sir. It has been filed, and I will just touch on the highlights, because I realize the hour is late.

The CHAIRMAN. Without objection, your full statement will be made part of the record, Ms. Wilson.

Ms. WILSON. Thank you, sir.

First of all, we have talked a lot and heard a lot about various technical processes that people, I think with good intentions, have planned for the reservations. As you know, in many third world countries, this happens, and, very often, inappropriate technology becomes a part of those people's lives.

The people themselves have come up with a petition, sir, which was filed, and the petition has four parts to it. I realize one part sounds like per capita payment, and there is a lot of objection to that, but it is really the people's attempt to deal with justice.

When you look at your booklet, "The Taken Land," you will see what in effect happened to three families on the Standing Rock Reservation. There are many others.

Part 2 of their petition would like to see the land go back to those individuals, because they did not have the opportunity to replace their lost lands.

Part 3 of the petition concerns the purchase of land under section 5 of the Oahe bill. I must say, Senator Inouye, I am very happy to see that you have established an investigation committee. I think, sir, this is one area that you would be justified in looking into.

The facts as stated in our statement are true. If you look at the list that we have furnished—we are fortunate that Senator Burdick helped us obtain that original list—in 1978 you will see where it says purchased by tribal council members and relatives, 43.7 percent. Purchased by BIA employees and relatives, 22.3 percent. Purchases by tribal directors or employees of the tribe, 7.7 percent. Other purchasers are 26.3 percent. There are additional purchasers since, but you will notice on the list that there are no Bird Horses. There are no Iron Cloud names or other names of people who were forcibly removed from their lands.

Now, we, the Landowners Association, made a statement at the JTAC statement held in January 1986. We don't find that in that commission's report, and there is a memorandum in there where the Aberdeen area office makes a weak attempt to address the section 5 land sale scam, calling it a questionable practice. That is a part of the information we furnished to you.

We would like to address this question of the power from these dams on the Missouri River. I think, as I said at the beginning of my statement, we consider ourselves to be traditional people. We know that we have to be unified in order to survive. We were united once on our Great Sioux Reservation, but the Act of 1889 put on these separate reservations.

However, many of us don't think that way. We think that anything that concerns the powers generated from those dams all up and down the Missouri has to include our relatives who are on the Cheyenne River, Crow Creek, Lower Brule, Yankton, Rosebud, and Oglala Reservations. They have a right to the Missouri River.

Furthermore, big payments such as that shown on page 10 of standing work plan, many of us—and I think we can say this for all the reservations—are so poor that rather than this much money to the council, would rather have free electricity perhaps to be worked through the local power cooperatives.

In closing, I wanted to share with you a photograph which we took of a dike which the Corps of Engineers constructed down there at the confluence of the Grand and the Snake and the Willow Creeks. You will notice it is a very high dike. What the people who live on the shores such as Mr. Iron Cloud would like to have happen is to have those shorelines diked someway, not for recreation especially but the water line would be stable and they could reforest it, and it would be shelter for their cattle and other animals.

We are somewhat concerned about the emphasis on irrigation. There are several irrigation projects on Standing Rock now. You know that all of the farm crops are under subsidy. It is not economically feasible to be a farmer any more. Only oats were free, but they anticipate by next spring that oats will not be free any more.

So, we would like to see the shoreline dealt with, perhaps not the extensive recreation proposed by the Standing Rock Tribal Council but more limited, but more diking that might be done and somehow the waters done with some kind of an engineering process which we understand exists where they can do something to the waves. I am not really knowledgeable in that area, but I know that there is such a process that exists that can be done.

"The Taken Land," as I said, was our effort to acquaint you with what has happened to three families on the Standing Rock Reservation.

We do favor some kind of legislation, but perhaps not from the power generated at those plants. If you are talking about something on the Missouri, that is covered by treaty, and all of our other relatives have a right to that, and we know we must unite. We can't just go and say this is this reservation and it has a right to charge ahead and ignore the rights of all of our other relatives.

Thank you, Mr. Chairman.

The CHAIRMAN. Ms. Wilson, have you discussed this matter with the leadership of your tribe?

Ms. WILSON. We have attempted, sir, at various times to contact them and to ask them about why don't you listen to what the people think should happen to them so that they can receive justice. At various times, we contacted them before these hearings, telling them we should talk over what the people would like and what you are proposing so that we might come to some agreement to work together.

Of course, we would like no more repeats of what happened under Oahe. This is why we are proposing that anything done to compensate for what happened to the people under Oahe be handled by a commission, a commission composed of members of the Standing Rock Tribal Council, by the people who actually lost land and their homes in the taking area, and the Standing Rock Land Owners Association. These people should be made accountable and responsible so that there will not be a repeat of what happened.

The CHAIRMAN. Your statement that you have submitted to this committee will be shared with the leadership of the Standing Rock Tribe.

Ms. WILSON. Thank you. That certainly should be, because we have made every attempt to deal with the Tribal Council, sir.

And we would like any elimination to Public Law 93-638. That is the other thing we would like to commend you on. The Public Law 93-638 process is being examined. We would like accountability and responsibility there, too, and services that are appropriate to the needs of the people.

The CHAIRMAN. I thank you very much.

Senator BURDICK. I thank you, too.

Ms. WILSON. Thank you.

[Prepared statements of Ms. Wilson and Mr. Bird Horse appear in the appendix:]

The CHAIRMAN. I would like to thank all of you who have participated in this hearing. Let me assure you that this committee and the staff will be working on this measure throughout the holiday season, and we will await the results of the December 2 meeting and the anticipated alternative plan which will be submitted by the Bureau of Indian Affairs 60 days from this date.

Until then, this committee is adjourned.

[Whereupon, at 4:34 p.m., the committee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF
WILLIAM H. CLAGETT
ADMINISTRATOR
WESTERN AREA POWER ADMINISTRATION
U.S. DEPARTMENT OF ENERGY
BEFORE THE
SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
NOVEMBER 19, 1987

PREPARED STATEMENT OF WILLIAM CLAGETT

Mr. Chairman and Members of the Committee, my name is Bill Clagett and I am the Administrator of the Western Area Power Administration (Western). I am pleased to present the Department of Energy's views on a Senate legislative proposal relating primarily to the Standing Rock Sioux Tribe and a House legislative proposal concerning the Three Affiliated Tribes of the Fort Berthold Reservation. The proposals would provide additional financial compensation to the tribes for land taken to build reservoirs which are part of the Pick-Sloan Missouri Basin Program (Pick-Sloan), and would also provide additional benefits to the tribes such as irrigation facilities, municipal water systems, improvement of reservation houses and roads, and replacement of reservation health care and educational facilities.

The Department of Energy (DOE) opposes the provisions of these proposals affecting Pick-Sloan revenues and rates because of their significant impacts on Pick-Sloan power customers.

These proposals would affect the activities of Western because Western is charged with marketing power produced by the Pick-Sloan hydroelectric facilities. Both of these proposals would require that the additional monetary compensation to the tribes for the taking of their lands be financed by certain of Western's power revenues. The proposals could increase the present rates for firm power that Western sells to Pick-Sloan power customers from 7.4 mills/kWh to as much as 10.4 mills/kWh, a 40 percent increase.

In addition, both proposals would require that Pick-Sloan power marketed by Western be made available to the Indian tribes for irrigation pumping. Neither proposal makes clear just how much Pick-Sloan power would need to be withdrawn from Western's existing firm power customers for use by the Indian tribes. This could result in additional power rate increases for Western's existing Pick-Sloan customers.

We have the following technical comments about specific sections of these proposals:

First, sections 2(a)(12), 2(a)(13), 2(b)(3)"(12)(B)" and 5(a)(2)"(d)(4)(B) and (D)" of the Senate proposal refer to power and revenues from power generated at the Oahe, Fort Randall, Big Bend, Gavins Point, Fort Peck, and Garrison dams. All of these dams are part of the Pick-Sloan Missouri Basin Program; Pick-Sloan power and revenues are not separately identified with any specific dam. It would simplify Western's administrative tasks in complying with these provisions if they refer to the Pick-Sloan Missouri Basin Program as a whole, rather than specifying the output or revenues from the output of individual Pick-Sloan features.

Second, section 5 of the Senate proposal requires that total compensation of $365,254,283 be paid to the Standing Rock Sioux Tribe, with 4.52 percent interest compounded annually on the unpaid amounts, to be paid in annual installments of $10,000,000. Since the initial interest payment would exceed $16,000,000, it appears that the total amount would never be repaid if annual installments were limited to $10,000,000. Moreover, section 5 does not specify the time period within which the $365 million must be paid. If it were repaid at the rate of $10 million per year, as provided in the proposal, the total compensation called for would never be repaid; the debt would increase each year.

Section 5 of the Senate proposal also does not specify whether the compensation is simply to be repaid out of power revenues or whether it is to be an additional expense to the power users. Section 103 of the House proposal is similarly unclear. It makes the compensation a specific feature of the Pick-Sloan Missouri Basin Program, but specifies that the allocation of these compensation costs shall not, in and of themselves, increase the rates to Pick-Sloan power customers. This is unacceptably vague wording. The legislative proposals should be clarified to indicate that Pick-Sloan power rates would have to be increased to provide sufficient additional revenue to pay the compensation. We estimate that the present power rates would increase from 7.4 mills/kWh to as much as 10.4 mills/kWh--a 40 percent increase--if both proposals were adopted. The House proposal alone would result in an increase of 0.9 mills/kWh (12 percent). The Senate proposal, if the repayment of $365,254,283 were completed in 50 years at a 4.52 percent annual compound interest rate, would result in an increase of 2.0 mills/kWh (27 percent). If the Senate proposal involved only an additional annual $10 million payment, it would result in an increase in the power rates of 1.0 mill/kWh (13 percent).

Please understand that we are not advocating power rate increases; we just want to point out that paying compensation from Pick-Sloan revenues will have a significant power rate impact, and the Committee should be aware of that impact before proceeding.

Third, section 4 of the Senate proposal would require the Secretary of the Interior to use Pick-Sloan power, without reimbursement, in developing irrigation on the Standing Rock Sioux Reservation. This provision appears to empower the Secretary of the Interior to dispose of Pick-Sloan power, which conflicts with Congress' grant of such authority to the Secretary of Energy, acting by and through Western's Administrator, by virtue of the enactment of subsections 302(a)(1)(E) and (3) of the Department of Energy Organization Act, Pub.L. 95-91. In addition, the statement that the power will be provided "without reimbursement" raises a question about whether the costs of power provided for such tribal farming purposes are to become non-reimbursable. In any event, both of these items conflict with prior legislation specifying that Western should provide the Indian tribes with Pick-Sloan power for irrigation purposes on the same terms as other irrigators receiving Pick-Sloan power. Moreover, these provisions could cause even greater increases in Pick-Sloan power rates.

Finally, sections 2 and 5 of the Senate proposal state that the Secretary of the Interior may provide Pick-Sloan power to the Standing Rock Sioux Tribe in lieu of the monetary payments provided for in section 5. As noted in the preceding paragraph, these provisions would empower the Secretary of the Interior with authority concerning the disposal of Federal power, authority which was transferred to the Secretary of Energy, acting by and through Western's Administrator, by subsections 302(a)(1)(E) and (3) of the Department of Energy Organization Act.

We appreciate this opportunity to share our comments with you and will be pleased to respond to any questions you may have.

Statement by John Doyle, Acting Assistant Secretary of the Army
(Civil Works)
Before the Select Committee on Indian Affairs
United States Senate

Mr. Chairman and Members of the Committee:

I am John Doyle, Acting Assistant Secretary of the Army (Civil Works). Accompanying me here today is Mr. John Velehradsky, Chief of Planning, Missouri River Division. I am pleased to appear to report on the progress made since the March 30, 1987, hearing on implementation of the recommendations of the Joint Tribal Advisory Committee (JTAC). As also requested, I will provide in the second half of my testimony, views on behalf of the Department of the Army on the legislative proposals of the Standing Rock Sioux Tribe and the Three Affiliated Tribes of the Fort Berthold Reservation. Unfortunately, as will be explained more fully in this statement and the statements of the other Federal witnesses testifying here today, Administration will oppose certain objectionable provisions of these legislative proposals if introduced as currently drafted.

At the March 30 hearing, Brigadier General Charles E. Dominy expressed our belief that a number of the JTAC recommendations have merit, that the Corps of Engineers would work with the Tribes to implement those with merit, but that others would be difficult to implement under our existing authorities and mandates.

The Corps has made considerable progress since March on those items we have authority to implement. We have had a series of meetings with Tribal representatives which involved the District, Division, and Washington levels of the Corps. In addition, in June, I met with Tribal representatives and Senator Burdick to discuss the JTAC recommendations and other issues raised by the Indians. As a follow-up to the June meeting, the Omaha District Engineer, in July, led a team of Washington, Division, and District level staff to represent me in visits to the reservations. Following that visit, the District in coordination with the Tribes developed a plan which responded to the JTAC recommendations, and I approved the plan in late July. On August 10, I sent a letter to you as well as other appropriate Members of Congress, State officials, and the Tribes, summarizing the major elements of our plan. Last week, we provided you, other appropriate members of Congress and the Tribes with a status report on our activities to date. With your permission, Mr. Chairman, I ask that these two reports be made a part of the record of this hearing.

The five recommendations in the JTAC report related directly to Civil Works program activities are discussed and our position on each is summarized below.

A. RETURN OF EXCESS LANDS. The JTAC report recommended, subject to easements for project purposes, return of former Indian lands which were considered in the report to be excess to project needs. The Tribes recommendation to return some former Reservation lands, subject to sloughing and flowage easements, has been reviewed. There may be parcels of land that can be determined excess to project needs. Therefore, we have initiated a review of project lands, applying current acquisition criteria, to identify such lands.

B. DEVELOPMENT OF THE SHORELINE RECREATION POTENTIAL OF LAKE SAKAKAWEA AND LAKE OAHE. The JTAC report found that return of excess former Indian lands would provide opportunities for development along the lakeshore as part of a Tribal economic enterprise. The Omaha District is working with the respective Tribal Councils to outline long-term plans which will identify potential recreation areas to improve lake access, satisfy the recreational needs of the area, and contribute to tribal economic development objectives. Such areas could be leased to the Tribes and made available for either tribal or private sector development.

C. REPLACEMENT OF INFRASTRUCTURE LOST BY CREATION OF LAKE SAKAKAWEA AND LAKE OAHE. The JTAC recommended construction of a bridge to permit reestablishment of a crossing on State Highway 8 in the Elbowoods area in North Dakota. Prior to inundation of the area by the Garrison project, the Corps and State of North Dakota entered into a contract for appropriate alteration, relocation, and abandonment of portions of the State highway system that were affected by this inundation. This contract provided for building of new bridges and highways and related facilities as well as abandonment of others, including the State Highway 8 Bridge. The abandonment of the bridge by the State along with the accomplishment of all other contractual obligations by the Corps fulfilled the legal obligation of the Corps for State Highway facilities affected by the project. Since the Corps fulfilled all contractual requirements and there was no requirement to replace the Highway 8 Bridge, I know of no authority the Corps has to replace this bridge.

Other items addressed in the Report regarding infrastructure replacement at both Lake Sakakawea and Lake Oahe are not within the purview of Corps of Engineers programs. These items should be addressed by the other Federal agencies, as appropriate.

D. OTHER ITEMS WHICH THE JTAC COMMITTEE DEEMED IMPORTANT. The Standing Rock Sioux Indian Tribe recommended the establishment of an Indian Desk within the Corps of Engineers Headquarters. We agree that, based on a review of the issues raised by the Tribe, communications between the Corps and the Indian Tribes should be improved. At my direction, the Omaha District has established an Indian desk to improve communications with the Tribes and to allow the Tribes to have a point of contact to resolve issues of concern. The Indian desk was established directly under the District Engineer who has the authority over most decisions regarding Indian issues. Procedures have been established to assure the issues affecting the Indian people that cannot be resolved at the District level are surfaced and referred for consideration to the appropriate levels of authority in the Department of the Army.

E. ADDITIONAL FINANCIAL COMPENSATION. One of the JTAC recommendations included a statement that the Tribes "were not compensated in an amount calculated by a methodology which accounted for the unique circumstances and values taken from the Tribe." In the original acquisition Acts, Congress addressed the question of adequate compensation to the Tribes for losses suffered in connection with these projects. In my understanding, the

Department of the Army has fully and faithfully executed responsibilities entrusted to it under these legislative directives.

The following item in the JTAC report, which could impact on the Corps Civil Works Program was not included in the Omaha District's Plan.

PROTECTION OF RESERVED WATER RIGHTS. Under Federal law, sanctioned by the Supreme Court, the United States is empowered as a trustee of the Indian Tribes to reserve to the Tribes enough water to meet the Indians' reasonable needs, including their future needs. These "reserved water rights" have not been quantified. It should be noted, however, with respect to the issue of reserved Indian water rights, that the Supreme Court has recently made it clear that the navigational servitude applies to all riparian and riverbed interests and that even the rights of individual States or Indian tribes in a navigable stream are subject to the paramount power of the United States to ensure that such waters remain free to interstate or foreign commerce. The construction and operation of these projects were authorized through an assertion of the navigation power, and, therefore, involve the navigation servitude.

Mr. Chairman, in summarizing our actions to address items raised in the JTAC report, I believe we are responding to the concerns of the Tribes within available authorities and we will continue to do so.

At this point, I would like to shift and address my comments to the two legislative proposals which were forwarded by your letter to me.

With respect to these two proposals, both contain items which are related to the issue resolution process which we are pursuing with Tribal representatives. However, as proposed, the legislation contains some provisions that Army opposes.

The Senate bill is limited in application to the Standing Rock Sioux Tribe and to Lake Oahe generally, except for Section 4, Irrigation Facilities, which refers to both the Standing Rock Sioux Reservation and the Fort Berthold Reservation.

Statements in the findings and purpose of Section 2 of the Senate bill conclude or suggest that just compensation has not been paid for all of the real estate interests acquired from the Standing Rock Sioux Tribe (see Sec. 2(a)(2), (3), (6), and (12)). Congress determined just compensation for the acquired lands and provided for payment in Public Law 85-915, 72 Stat. 1762 (September 2, 1958). If the Tribe, or an individual Indian, objected to the compensation provided for in that law, they had the right to have that issue adjudicated in Federal District Court. Therefore, Public Law 85-915 and the opportunity to litigate the amount of any payment settled the legal issue of just compensation, and the remaining issue is a factual one -- were the Indians paid the compensation provided for in that law. Army's position is that we have made full and complete payment under appropriate prior laws and to the best of our knowledge no one is challenging it. Language in the findings and purpose implies that the Indians are entitled to compensation for "other losses" (see Sec. 2(a)(2), (3), and (12) and Sec. 5). The Fifth Amendment to the Constitution requires the Government to pay just compensation for lands taken, and just compensation is the fair market value of those lands. However, the courts have held that the United States is not obligated to compensate owners for "other losses" under the constitutional requirement of just compensation.

In general, the Department of the Army cannot support Section 2.

We are particularly concerned with the possible implications of the proposed language in Sections 2(a)(12) and (13). Section 2(a)(12) makes reference to the Standing Rock Sioux Tribes "prior and superior right of usage" in a conclusionary way which may inappropriately address water allocations best left to be resolved under the affected States' water laws and existing Federal laws. Section 2(a)(13) draws a conclusion of entitlement of the Standing Rock Sioux Tribe to hydropower revenues, a matter which cannot properly be established at least until the Tribe's water rights have been quantified. Furthermore, all questions in the bill relating to the Indian water rights must be understood in the context of well-established Federal law relating to the navigational servitude. The Supreme Court has recently made it clear that it "has repeatedly held that the navigational servitude applies to all holders of riparian and riverbed interests" and that even the rights of individual states or Indian Tribes in a great navigable stream are subject to the paramount power of the United States to ensure that such waters remain free to interstate and foreign commerce. United States v. Cherokee Nation of Oklahoma, 107 S. Ct. 1487, 1492 (1987). The construction and operation of the projects in question were authorized through an assertion of the navigation power and therefore involve the navigational servitude. Notwithstanding this, the Congress, although not legally required to do so, paid compensation to the Tribes for the occupation of the riverbed for the projects.

Section 2(a)(13) of the Senate bill provides entitlement of the Standing Rock Sioux Tribe to the revenues from hydropower generated at Oahe Dam and three other mainstem dams further downstream. Hydropower generation results from Federal development to store the flow of the river and to develop its head potential. The revenues from hydropower are needed to repay the allocated costs for this purpose. Diversion of hydropower revenues would interfere with project repayment or raise hydropower rates or both.

Section 2(b)(3) of the Senate bill would implement all of the recommendations of the JTAC report. We have two concerns with respect to this portion of the bill. First, the report contains subjective and undocumented claims which seem to lack substantial evidence needed for Congress to adopt the JTAC report. Second, Section 3 appears to go beyond the recommendations of the JTAC report in that it raises considerations not previously covered in the JTAC report.

Section 3, adds a new paragraph (k)(1) to Section 2 of Public Law 89-108. The new paragraph (k)(1) makes reference to the Grand River Spawning Station. This is a facility of the State of South Dakota rather than the United States Fish and Wildlife Service.

Section 3 also adds a new subsection (l) to Public Law 89-108 granting exclusive jurisdiction to the Standing Rock Sioux Tribe for certain activities enumerated in the new subsection. The Department of the Army recognizes State game and fish agencies are, as a general matter, responsible for administering

State laws pertaining to hunting, fishing, and boating at Corps projects. Army also recognizes the legitimate interest which the Sioux Tribe may have in these activities. Whatever division of jurisdiction occurs with respect to these activities, Army's jurisdiction and interests with respect to assuring proper operation and maintenance of these projects must be preserved. Concurrent Federal jurisdiction over these activities must be maintained in order to assure this result.

Section 3 also adds a new subsection (m) to Public Law 89-108 requiring the Secretary of the Army to assist the Standing Rock Sioux Tribe in the development of recreation facilities. The Omaha District of the Corps of Engineers is already working with the Tribe to study the issue of recreation development along the shores of Lake Oahe. Until completion of that study, it is premature to judge what types of recreation development assistance may be appropriate. Legislation on the matter is not warranted at this time.

Section 5 requires the payment of additional compensation, including interest, to the Standing Rock Sioux Tribe. The Department of the Army defers to the Department of the Interior on the issue of additional financial compensation. However, the Department of the Army objects to any legislation which would grant the Tribes any additional compensation for any claim relating to the government's exercise of its navigational servitude.

We cannot support the provisions of Section 7 which deal with lands. The Omaha District is addressing the potential for excess lands and this issue may be resolvable within existing authority. However, transferring all lands above 1620 feet above mean sea level at Lake Oahe would allow an inadequate amount of land for project purposes. That elevation is the level of the maximum operating pool for Lake Oahe. This would not be a desirable or adequate project boundary because of the difficulty of identification and marking the boundary, and because it would not recognize the requirements for wave action, shoreline erosion, and bank sloughing.

Section 8 of the Senate bill provides for a special office for Indian concerns. Army agrees with the need for effective methods to address Indian issues. The Omaha District has established a point of contact to address such issues. This section, however, expresses requirements and conclusions beyond simple coordination. While Army cannot support this section as written, the need for an Indian desk or special office at the District level to address Indian concerns is supported and has already been implemented. We believe this revised organization will be demonstrated to be the most responsive approach for addressing Indian issues.

The Department of the Army is also concerned with the amendment of Public Law 89-108 in section 9, particularly with respect to addition of a new subsection 14(b). The new subsection establishes an unworkable and open-ended procedure for addressing land or water rights issues, a procedure which is probably in the best interests of neither the Federal Government nor the Standing Rock Sioux Tribe.

With regard to the House bill, the opening sections of the bill limit it to Garrison Dam and Reservoir (currently known as Lake Sakakawea). Section 3 states that, "Congress adopts the findings, conclusions, and recommendations of" JTAC. As with the Senate bill on this point, there are two concerns I would like to call to your attention. First, the report contains subjective and undocumented claims which seem to lack substantial evidence needed for Congress to adopt the JTAC report. Second, Section 3 appears to go beyond the recommendations of the JTAC report in that it raises considerations not previously covered in the JTAC report.

Section 101 of the House bill provides for additional financial compensation. The Department of the Army defers to the Department of the Interior on the issue of additional financial compensation. However, the Department of the Army objects to any legislation which would grant the Tribes any additional compensation for any claim relating to the government's exercise of its navigational servitude.

Section 103(b) of the House bill addresses financing the additional compensation. The proposed repayment from power revenues, provided a power rate increase does not result, appears to be a contradiction in terms. The original hydropower cost allocation was $700,835,000. The Three Affiliated Tribes are now proposing to increase the costs by $178,400,000 without increasing the power rates to the customers. The Standing Rock Tribe wants $365,254,283; other Tribes haven't submitted their bills and the States are making moves to again ask for money in lieu of irrigation development. In addition, the Indians want free power. As the Committee knows, nothing is for free. Someone is going to have to pay the additional compensation being requested in Section 103 of the bill. If it's not the Indians and not the States and not the customers, who does that leave as the banker of this activity? The Federal taxpayer.

Because of the deficiencies in the JTAC report, among other reasons, the Army is not able to support the conclusions in Section 201 concerning Tribal entitlements.

Section 206 addresses return of former Indian lands. We do not believe a return of all former Indian lands acquired for Lake Sakakawea would be a wise course of action because it means that lands in the pool and other lands critical to the operation and maintenance of the project would be transferred out of direct Army control. This could seriously affect our ability to operate the project for authorized project purposes and potentially prevent us from carrying out Congress's legislative direction with respect to these projects.

The remainder of Title II and all of Title III pertaining to the House bill deals with authorizations pertaining to other Federal agencies and is neither supported nor opposed by the Department of the Army. As a general matter, where items of the proposed bills fall within the program responsibility of other agencies, we therefore defer to those agencies for comment.

Mr. Chairman, this concludes my presentation. Thank you for this opportunity.

STATEMENT OF FRANK RYAN, DEPUTY TO THE ASSISTANT SECRETARY - INDIAN AFFAIRS (TRUST AND ECONOMIC DEVELOPMENT), DEPARTMENT OF THE INTERIOR, BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, U. S. SENATE, ON THE IMPLEMENTATION OF THE GARRISON UNIT JOINT TRIBAL ADVISORY COMMITTEE FINAL REPORT AND RECOMMENDATIONS AND DRAFT LEGISLATION TO IMPLEMENT REPORT RECOMMENDATIONS.

November 19, 1987

Mr. Chairman and members of the Committee, I am pleased to present this report on the implementation of the recommendations in the Garrison Unit Joint Tribal Advisory Committee (JTAC) Final Report, as well as our views on the two draft legislative proposals submitted to us by the Committee. Our testimony will focus on those portions of the recommendations and legislative proposals that effect the programs of the Department, and where relevant, we defer to the comments and positions of the U.S. Army Corps of Engineers and the U.S. Department of Energy.

We wish to state at the outset that if the proposed legislation were introduced as currently drafted the Administration would oppose it. The bills would require the payment of hundreds of millions of dollars in additional compensation to Indian tribes which have already received just compensation for their lost property. The bills would also require the expenditure of hundreds of millions of dollars on infrastructure facilities and on irrigation projects of unknown economic merit. In a time of severe fiscal restraint, we do not believe that such an intense distribution of Federal funds at two out of the 300 Indian reservations and 200 Alaska Native Villages is a prudent or equitable implementation of Federal programs.

Implementation of JTAC recommendations

On March 30, 1987, this Committee held a hearing to address the JTAC Report. During the hearing, in response to a suggestion by Assistant Secretary Swimmer that there may be a more effective way for the Tribes to spend the funds earmarked for irrigation development, the Chairman asked whether the

Bureau had explored the idea with the Tribes through a consultation process. Mr. Swimmer responded that he would be happy to sit down with the Tribes and look at alternative ways of spending the Garrison funds more effectively.

On April 28, 1987, Mr. Swimmer hosted a meeting with the Standing Rock Sioux Tribe, the Three Affiliated Tribes, Congressional staff, and representatives from the agencies directly involved with the Garrison Project. Although Mr. Swimmer was prepared to discuss alternative proposals, the focus of the meeting was on achieving implementation of the specific recommendations in the JTAC Report. This meeting served as a springboard from which the Tribes engaged in more detailed discussions with the U.S. Army Corps of Engineers, the Western Area Power Administration, and the Bureau of Reclamation concerning implementation of the JTAC recommendations. However, no meaningful discussions with the Tribes on alternatives to irrigation development have yet been conducted but we would be pleased to do so at the request of the Tribes.

Also at the March 30 hearing, the Committee asked Assistant Secretary Swimmer when he would be willing to take administrative steps to coordinate fish and wildlife and law enforcement projects with the Standing Rock Sioux Tribe to protect the tribe's hunting and fishing rights on the reservation in and around Lake Oahe. Assistant Secretary Swimmer stated that he would be prepared to do that at any time the Tribes would like to sit down and talk about it, and that he would be happy to arrange such a meeting with the Fish and Wildlife Service. While the April 28 meeting would have been an appropriate time to discuss the Tribes' hunting and fishing rights, other issues such as irrigation development, infrastructure replacement and economic development were the main subjects of discussion at that time.

As a follow-up to the April 28 meeting, in FY 1987, the BIA executed contracts with the Three Affiliated Tribes and the Standing Rock Sioux Tribe to enable the Tribes to analyze and research means of initiating JTAC recommendations. The contract activities include consultation with Federal and state water agencies, research and design of tribal water administration authority, consultation with the Corps of Engineers on restoration of shoreline ownership, and establishment of a Commission to work with Federal and state agencies to begin restoring lost infrastructure.

Also, in FY 1987, the Bureau of Reclamation involved the Tribes in the planning process for implementation of the Garrison Diversion Unit Reformulation Act and provided the Tribes with $97,000 through an interagency agreement with the BIA. The purpose of this endeavor is to assist the Tribes in the preparation of comprehensive plans for the reservations that are to benefit from the Garrison Project. As the plans are completed and approved, it is our intention that the design data collection and design and construction of the units be accomplished by each tribe on their own reservation under the provisions of the Indian Self-Determination and Education Assistance Act (P.L. 93-638).

At present, the tribe's lawful water entitlements are unknown and there is no indication that either tribe is interested in pursuing a quantification of their rights.

I would now like to turn to a discussion of the two draft legislative proposals forwarded by the Committee. The purpose of the two bills is to implement certain recommendations from the Garrison Unit Joint Tribal Advisory Committee.

Standing Rock Sioux Legislative Proposal (Senate bill)

Section 3 of the proposal authorizes the Tribe to share in the propagation and management of the fish resources on and near the reservation and further provides that the Tribe shall have exclusive jurisdiction to regulate hunting, fishing, and boating within the boundaries of the reservation. We agree that the Tribe should be able to benefit from any Federal fishery facilities located on and near the reservation, and although we agree that the Tribe's authority to regulate and manage the fish and wildlife resources on the reservation should be recognized, jurisdictional questions remain between Indian and State authorities. We also assume that section 3 is not intended to supersede existing Federal wildlife statute or case law.

Section 4 of the proposal directs the Secretary to develop irrigation units on the reservation in accordance with the JTAC. The Department can not support this proposal until it is determined through appropriate studies that the lands in question are practicably irrigable and that the development of those lands is financially justified. Moreover, even if these conditions were met, funding for new irrigation construction is a low priority in the current fiscal climate and we would oppose it. We also question the acquiring of fee held farm holdings unless there are willing sellers.

Section 5 of the proposal directs the Secretary to use Pick Sloan power revenues to compensate the Tribe in the amount of $365,254,283 for land taken for construction of the Oahe Dam and for other damages incurred by the Tribe due to construction of the dam. It is not clear how this sum was arrived at. However, as we have stated in earlier testimony, we do not believe that the JTAC Report provides documentation to establish that the Tribe is legally entitled to any such additional compensation. In addition, we note that the $10 million annual payments would not be adequate to cover the interest payments let alone retire the debt. We would oppose a direction to the Secretary to provide such compensation.

Section 6 of the proposal provides that the Tribe will be involved in the planning, designing, construction and maintenance of any municipal, rural, and industrial water systems developed under the Garrison Diversion Reformulation Act of 1986 (P.L. 99-294), and clarifies the applicability of the Indian Self-Determination and Education Assistance Act to any such water development. We have no objection to this concept, however, application of the Buy-Indian Act may be more appropriate to such development.

Section 7 of the proposal appears to assume that some land at elevation 1,620 feet above the water level of Lake Oahe is surplus to project needs and further directs that such lands be returned to the Tribe and held in trust by the United States. This section also subjects the return of the lands to an easement for flooding and any leases or other rights held by any person prior to transfer back to the Tribe, and clarifies that the Tribe shall have civil jurisdiction over persons and property on such lands to the same extent that the Tribe has civil jurisdiction over other reservation lands. While the Department does not object to assuming responsibility for the trust status of any lands returned to the Tribe, we defer to the U.S. Army Corps of Engineers on the issue of whether such lands are surplus to the needs of the project.

Section 8 directs the establishment of an office within the Army Corps of Engineers to address Indian concerns over any aspect of the Pick Sloan Missouri Basin Program. We defer to the Corps as to the establishment of such an office.

Three Affiliated Tribes Legislative Proposal (House bill)

Title I of the proposal establishes an Economic Recovery Fund for the Tribes and endorses the JTAC Report conclusions that the Tribes should receive additional financial compensation from Pick Sloan power revenues in the amount of $178.4 million for the taking of land, the displacement of families, and the construction of the dam and reservoir. As we stated in our earlier testimony, we do not believe that the JTAC Report provides adequate documentation to establish that the Tribes are legally entitled to additional financial compensation in the form of the substitute or replacement value of their economic base lost as a result of the siting of Lake Sakakawea. We would oppose a direction to provide such compensation.

Title II of the proposal provides for the replacement of infrastructures the JTAC Report concluded were lost by the creation of Garrison Dam and Lake Sakakawea. We believe that the need for such infrastructures as education, housing, and roads should be evaluated by the appropriate Federal agencies and included in the annual program and budget plans for each agency, if appropriate. As a general principle, needs identified for the Three Affiliated Tribes must be weighed fairly against competing needs for similar facilities on other reservations.

Title III directs the development of irrigation, municipal, industrial, and rural water systems for the reservation in accordance with the JTAC recommendations, and clarifies the applicability of the Indian Self-Determination and Education Assistance Act (P.L. 93-638) to the development activities. We support timely implementation of all water system development authorized by P.L. 99-294. However, we cannot support irrigation development in excess of that contemplated in P.L. 99-294 until it is determined through appropriate studies that such lands are practicably irrigable as well as financially justified. Moreover, as we previously stated, application of the Buy-Indian Act may be more appropriate to such development.

This concludes my prepared statement. I would be happy to answer any questions you may have.

TESTIMONY OF EDWARD LONE FIGHT, CHAIRMAN OF THE THREE AFFILIATED TRIBES, BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON NOVEMBER 19, 1987 REGARDING THE IMPLEMENTATION OF THE FINAL REPORT OF THE JOINT TRIBAL ADVISORY COMMITTEE (JTAC)

Mr. Chairman Inouye, it is my pleasure to appear before your Committee and to testify regarding the recommendations contained in the report issued by the Joint Tribal Advisory Committee (JTAC) on May 23, 1986. This Committee has already heard, on March 30, 1987, the testimony of Mr. C. Emerson Murry, and his colleagues, who served on that federal commission. Their testimony underscored the Three Affiliated Tribes' entitlement to, as well as the need for, just compensation due to their loss of over 156,000 acres of Indian lands - including all of their prime agricultural bottom lands - as the site for the Garrison Dam and Reservoir. That dam is the main component of the massive Pick-Sloan Project for the development of the Upper Missouri River Basin as authorized by the Flood Control Act of December 22, 1944. This committee also heard tribal testimony, on that day, that portrayed in stark terms the human costs associated with the removal and dispersion of virtually an entire tribal people in order to make way for the Pick-Sloan Project in the 1950's.

The Three Affiliated Tribes recognize, that the Pick-Sloan Project has, through its linked system of multi - purpose dams and reservoirs, resulted in substantial flood control, navigation, recreation, and power benefits to the people throughout the Missouri River Basin, and beyond. Indeed, General Murry, in his prior testimony before this committee, estimated that the value of the *benefits conferred by Pick-Sloan exceeded several billion dollars annually. Yet, the Joint Tribal Advisory Committee (JTAC) found that the discrete group that had borne the brunt of the costs associated with the development of the Pick-Sloan Project - the Three Affiliated Tribes - has yet to be justly compensated for their losses. That commission found that the Three Affiliated Tribes, consistent with the governing facts and law, were entitled to $178.4 million dollars in order to replace the economic base of the Fort Berthold Reservation that had been sacrificed to the Project. That commission was also cognizant of the historical fact that the Three Affiliated Tribes, before their removal, was the only economically self sufficient agricultural Tribe on the Great Plains.*

The JTAC Report, emphasized the following major points that compelled the conclusion that Congress had not justly compensated the Three Affiliated Tribes for the loss of their reservation, and its productive potential, under the authority of Pub. L. 81-437:

1. *Congress recognized from the outset, through the "lieu lands" mandate to the War Department, that the Three Affiliated Tribes were entitled to the replacement or substitute value of their economic base as the basis for just compensation.*

2. *Congress, realizing that a suitable replacement reservation could not be provided to the Tribes, undertook to provide the Tribes with the cash equivalent of their economic land base on the principle of substitute or replacement value.*

3. Congress, because of budgetary, and other pressures, failed to accord the Tribes this standard of compensation under the terms of the final settlement act, Pub. L. 81-437.

4. The Three Affiliated Tribes' proposals to utilize the $7.5 million, payable to the Tribes as compensation under Pub. L. 81-437, for economic development purposes were frustrated by the Bureau of Indian Affairs policies at the time. All of the funds were expended by way of per capita payments to tribal members to meet their subsistence needs and expenses after the removal.

5. The Bureau of Indian Affairs was unable to meet the statutory mandate of reestablishing the tribal people on the residual reservation lands because those lands could not support that population and because sufficient funding was not available to reestablish those persons so relocated.

The Three Affiliated Tribes acknowledged, in prior testimony before this committee, that the JTAC's recommendations regarding just compensation, the replacement of lost tribal infrastructure, and the limited development of the irrigation potential of the reservation, would lay the basis for a genuine and sound tribal economic and social recovery plan. Let me emphasize again here today that the Three Affiliated Tribes agree with the JTAC report that there should be no per capita payments to any tribal members from any just compensation award to the tribe.

The Tribes also recognize their affirmative obligation to present to this committee a focussed, and realistic, plan for the staged implementation of the JTAC recommendations on the Fort Berthold Reservation. No amount of money, unless it is wisely programmed for tribal needs over a substantial time horizon, will allow the recovery of the Three Affiliated Tribes from the impacts of the Garrison Dam.

Senator Inouye, you requested that the Three Affiliated Tribes, with the help of your committee staff, consult with the various responsible federal agencies, as well as other interested parties, regarding the reasonable and realistic implementation of the JTAC recommendations. Your committee staff has been instrumental in arranging a large meeting, at which the Bureau of Reclamation (Brec), the Bureau of Indian Affairs (BIA), the Western Area Power Administration (WAPA), the Indian Health Service (IHS) and the Army Corp of Engineers (Corps) met with tribal representatives. The Three Affiliated Tribes, after that big meeting, has met several times with each of the above identified federal agencies. Unfortunately, I have to report that, except in the case of the Bureau of Reclamation, very little - or no - progress has been made toward the administrative implementation of any of the recommendations of the Joint Tribal Advisory Committee. The virtually uniform response of these federal agencies is that they lack the necessary legislative authority - and the funds - to carry out any of the JTAC's recommendations. Only the Bureau of Reclamation has responded to the Tribes' request for assistance in the future development of important water projects, *particularly in the development of an adequate municipal, industrial and rural (MIR) system to protect critical health and environmental values on the Fort Berthold Reservation.*

The Three Affiliated Tribes, in light of these responses and in consultation with your committee staff, has developed draft legislation for consideration by this committee. This draft legislation represents a careful, and considered, blending of a realistic amount of just compensation, the replacement of critical elements of lost tribal physical and social infrastructure, as well as limited water project development on the Fort Berthold Reservation. Such a judicious blending of the recommendations will set the stage for the Three Affiliated Tribes' economic and social recovery from the impacts of the Pick-Sloan Project on the Fort Berthold Reservation.

The Three Affiliated Tribes will realize four goals from the Congressional enactment of this draft legislation:

1. *the restoration of tribal community well-being;*
2. *the assurance of tribal governmental integrity and stability;*
3. *the eventual achievement of economic parity with the non-Indian communities surrounding the reservation; and*
4. *the elimination of dependence.*

I will briefly address the purpose and intent of three distinct titles of this draft legislation:

1. Title I: Just Compensation

Title I declares that the Three Affiliated Tribes are entitled to $178.4 million dollars in just compensation, consistent with the JTAC report, for the federal taking of over 156,000 acres of reservation lands, including thousands of acres of prime agricultural bottom lands, as the site for the Garrison Dam and Reservoir. That title also establishes in the United States Treasury an account, in the above referenced amount, known as the Three Affiliated Tribes Economic Recovery Fund. Appropriations to that account are authorized in the principal amount of $3,568,000, plus 4% interest on the unpaid balance, on an annual basis for a period of 50 years beginning with Fiscal Year 1989.

However, at this committee's earlier suggestion and in consultation with committee staff, however, the Three Affiliated Tribes have proposed an alternative financing method for the payment of just compensation of the Three Affiliated Tribes that would be in lieu of the above identified appropriated account. This alternative method provides for the financing of just compensation to the Three Affiliated Tribes through utilizing receipts available from the integrated programs of the Eastern Division of the Pick-Sloan Missouri River Basin Project. This alternative financing method has been structured with two purposes in mind: First, that the responsible repayment source, as an equitable matter, for retiring the just compensation debt owed to the Three Affiliated Tribes should be the receipts obtained by the Pick-Sloan Project. By this method, the Three Affiliated Tribes would participate for the first time in the revenues *derived by the Pick-Sloan Program through the use of its assets. Second, the Tribes understood that the repayment of the just compensation debt out of these receipts can be achieved especially in light of recent Congressional changes in the features of the Pick-Sloan Project. This draft language would further require the Secretary of Interior to make disbursements from this account to the Three Affiliated Tribes consistent with a tribal economic recovery plan approved by the Secretary. Such a plan would prohibit per capita payments to tribal members and ensure that the scheduled compensation payments are directed to long term economic recovery projects on Fort Berthold.*

However, let me emphasize, Mr. Chairman, that the Three Affiliated Tribes are offering this alternative financing method only for this committee's consideration. The just compensation declared in Title I would continue to be a debt of the United States owed to the Three Affiliated Tribes regardless of possible future impairment of this alternative financing method, for whatever reason.

2. Title II - Replacement of Critical Tribal and Physical Infrastructure

Title II authorizes the replacement of certain critical elements of tribal physical and social infrastructure lost to the creation of the Garrison Dam: a tribal health care facility, school dormitories, a bridge for access between the new tribal communities, and adequate secondary access roads. Replacement of these facilities will allow the Tribes to regain a level of services, and integration, similar to that enjoyed before the flooding of the Reservation and the *dispersion of the tribal people. This title also recapitulates the statutory purpose and intent of Pub. L. 81-437, as of yet unrealized, to reestablish the tribal people fully in their new homes and environment.*

3. Title III - Development of MIR and Irrigation Potential

Title III authorizes the future irrigation development of 30,000 acres of reservation lands in order to replace the Tribes' irrigable land base that was lost to the Garrison Dam. This title also calls for the treatment of on farm costs, land acquisition costs and operation, maintenance and replacement (OMR) cost to be treated as deferrable project costs pursuant to the Leavitt Act, 25 USC §386A. The Tribes recognizes, and Title III provides, that the project, if authorized, should not proceed until it is technically feasible to do so.

Mr. Chairman, the Three Affiliated Tribes have sacrificed a great deal for the success of the Pick-Sloan Project. But they are ready, with your assistance, to go forward with a reasonable legislative plan that will ensure the future economic recovery and the return to independence, of the tribal people of the Fort Berthold Reservation.

This concludes my testimony and I would be happy to respond to any question you may have.

Prepared Statement of Charles W. Murphy, Chairman
# of the Standing Rock Sioux Tribe
Before the Select Committee on Indian Affairs
United States Senate
on
Oversight Hearings to Review Federal Agency Actions Related to the Implementation of the Department of the Interior's Garrison Unit Joint Tribal Advisory Committee's Final Report Recommendations

Mr. Chairman and Members of the Committee:

We appreciate this opportunity to place before you the proposed free-standing legislation of "The Standing Rock Sioux Tribe's Restoration and Reconstruction Act of 1987" which we propose be immediately introduced. The purpose of this draft bill is to provide the Tribe's views regarding implementation of the recommendations of the Final Report of the Garrison Unit Joint Tribal Advisory Committee (JTAC). When the final JTAC report was issued on May 23, 1986, the Standing Rock Sioux Tribe was assured of cooperative congressional action to resolve the Committee's recommendations. This hearing is evidence of such cooperation, which we trust will continue through enactment of legislation like that which the Tribe proposes.

Since our last appearance before this Committee on March 30, 1987, we have had numerous meetings with the Bureau of

Reclamation, Corps of Engineers, Western Area Power Administration, as well as the Bureau of Indian Affairs addressing those JTAC recommendations that could be resolved administratively. However, Mr. Chairman, the Tribe finds that the federal government is willing to handle few, if any, JTAC recommendations without further action by Congress.

Even with regard to currently available planning funds for the irrigation and municipal water development, the Bureau of Reclamation refuses to allow the Tribe to contract to undertake the planning for its own projects. The Tribe is fully capable of planning these projects, as it has done with previous projects at less cost and in a quicker time frame than the Bureau of Reclamation. We have demonstrated this capability in the development of our existing irrigation units, which the Tribe planned and constructed under 638 contracts with the BIA. Nevertheless, the Bureau of Reclamation continues to oppose the Tribe once again as it did under P.L. 85-915. We urge the Committee's assistance in resolving this impasse on behalf of the Tribe.

Mr. Chairman, all features identified by the Standing Rock Sioux Tribe in its March 30, 1987 testimony are still supported by the Tribe wholeheartedly, which includes the opposition to any per capita pay outs. In addition, we note that the communities of Wakpala, Little Eagle and Bullhead, South

Dakota, Indian communities on our Reservation adjacent to Lake Oahe and the Grand River, are still situated within the flood plain area, and are seriously flooded almost yearly, causing considerable injury. This egregious situation must not be allowed to continue.

The draft legislation covers the following matters:

Section 3. Fish and Wildlife. The United States Fish and Wildlife Service has a spawning station on the Reservation at the Grand River -- adjacent to Lake Oahe. This provides fish for sportsmen elsewhere but not for tribal fishermen on the Reservation. The draft bill calls for the Tribe to receive its fair share of the fish spawned at this station on the Reservation.

The Tribe proposes that the bill clarify that the Tribe has exclusive jurisdiction over hunting, fishing and boating within Lake Oahe on the Reservation; however, we further propose that a "joint Commission" be initiated between the Tribe and the states to provide over-sight responsibilities. These resources must be properly managed, so the Treaty and statutorily protected rights of Indians can be protected and enhanced. Indian hunting and fishing has great cultural significance, and we have carefully protected these resources for hundreds of years. Today, hunting and fishing by non-Indians on our Reservation is extensive, and has a direct and significant impact on the tribal right to fish. Therefore the legislation would clarify the Tribe's right to regulate these matters in the Taking Area, which both federal and state courts have held remains part of the Reservation. The Tribe's goal is to encourage hunting and fishing on the Reservation in a manner that protects tribal subsistence rights and conserves the resources for future generations. We note that we continue to meet with State Fish and Game officials to discuss our mutual interests.

Sec. 3 Development of Shoreline Recreation Potential

Development of the Reservation's shoreline has long been a tribal objective. With over 93 miles of shoreline within the boundaries of the Reservation, the Tribe recognizes the potential economic opportunities shoreline development represents.

In 1971, at the request of Standing Rock, the BIA conducted an inventory of potential recreation sites along the Missouri River identifying 31 sites. Although the Tribe would like to see all of the sites developed, we realize that this may not be immediately feasible. However, in the interests of facilitating shoreline recreation development, the Tribe has identified six sites that are ideally suited for immediate development. Those sites are listed as follows:

1. Yellow Hammer Bottom, Cannonball District;

2. North Cannonball District;
3. Walker's Bottom, South Cannonball District;
4. Porcupine Creek Bay;
5. Four Mile Creek, Fort Yates District;
6. Kenel Bay Area, Kenel District; and
7. Wakpala District.

These specific sites were chosen because (1) they all have graveled roads leading directly to the shoreline; (2) they are suitable for development, and (3) situated near deeper water to permit fishing, swimming and launching and docking boats.

Presently, there are only three areas within the Reservation boundaries that can be classified as recreational areas. The first, located in Fort Yates, is a primitive site consisting of a boat ramp, portable boat dock, restrooms and waste disposal receptacles. The second, located on the Grand River between Mobridge and McLaughlin, South Dakota, is more representative of a recreation area. However, it is underutilized due to extreme lake fluctuations. The third, Jed's Landing, north of Mobridge, South Dakota and within the Reservation boundaries, is a private non-Indian commercial concession. The latter is what the Tribe envisions as a full-service water based recreational facility.

With congressional authorization, the Army Corps of

Engineers and the Tribe can begin to finalize design, specification and cost estimates for the sites identified above.

Sec. 4. Irrigation Facilities

The Tribe supports the reasonable, incremental development of its irrigable lands. The draft legislation calls for the construction of four small new units, with a total new irrigated acreage of 3,157 -- to be added to the Tribe's two existing units which total 2,325 acres. This development was recommended by the JTAC report. This development is a small part of the Tribe's irrigable land base.

The Tribe, if it is to expand its agricultural development, must provide a planned, coordinated approach. Irrigation development is needed by the Tribe. We recognize that without sufficient equity injections into any developmental project there will likely be problems. Therefore, we believe that Congress should recognize that providing just compensation from power revenues, as described below, is essential to the success of irrigation and other forms of development at Standing Rock.

Sec. 5. Power

The Tribe firmly believes that the economic viability of the Reservation can be assured in the future by participation in the electrical hydro-generation from the Missouri River Basin Program authorized by Congress in the 1944 Flood Control Act.

In 1958 the United States took 56,000 acres of lands owned by the Standing Rock Sioux Tribe and its members, and the Tribe was "compensated" for those lands at values appraised for grazing, woodcutting and other purposes. But the value of our lands as a power site was great, and the value of the river bed, for which we are informed, no compensation was received, remains great.

The Western Area Power Administration, managers of the Missouri River Basin hydroelectric and transmission system, uses revenues received from the sale of electricity to pay for the costs of construction, operation, maintenance and replacement of the power investments. Additionally, revenues are used, in part, to repay the cost of the "integrated projects" not originally contemplated in the Missouri River Basin Program. Finally, the revenues pay back approximately 85 percent of the costs of the Missouri River Basin Program irrigation construction.

In the near future, electrical revenues will have paid the cost of investment by the United States in the power system. With the recovery of power investment, future electrical revenues will be directed to the repayment of existing irrigation construction that is almost exclusively non-Indian. WAPA has projected the development of several million additional acres of irrigation construction and has planned to use future electrical revenues to re-pay those costs. It is clear, however, that future irrigation development to the levels contemplated by WAPA are unrealistic and that future revenues from the sale of electricity can be directed to other purposes, if authorized by Congress.

The Tribe respectfully petitions this Committee to consider legislation that would direct WAPA to allocate a portion of the hydropower energy to the Standing Rock Sioux Tribe and other Tribes affected by the development of the Missouri River Basin Program. To assist the Committee, the Tribe urges that WAPA be authorized and directed to perform power repayment studies with full participation by Standing Rock, for the purpose of determining a basis for power allocation to Standing Rock and the effect on "power and irrigation repayment." The Tribe is confident that such an investigation can provide the ways and means for the Standing Rock Sioux Tribe to receive an allocation of federal energy with minimal effects on the WAPA electrical repayment structure.

An allocation of electrical energy will provide financial resources for the future development of our land, water and human resources. We can plan our future with the certainty of an economic base.

The petition the Tribe makes is one of the means of accomplishing the recommendations of JTAC. First, an allocation of energy will put to use for the benefit of the Standing Rock Sioux Tribe part or all of our water rights reserved for the irrigation of as many as 303,000 acres of irrigable lands within the Reservation. The use of undeveloped irrigation water requirements for production of electrical energy will preserve and protect our water rights. Second, the sale of electrical energy allocated to Standing Rock will provide a source of financing necessary to compensate the Tribe for damages identified by JTAC ($181.2 to $349.9 million). Finally, an allocation of electrical energy would better reflect the fair value of the lands taken by the United States for the construction of Oahe Dam and Reservoir than the compensation received by the Tribe and its members based on appraisals for grazing, agriculture and woodcutting. The value of the land as a power site was never evaluated in the appraisals. Moreover, the Tribe was never compensated for the value of the land beneath the Missouri River.

The Tribe urges congressional authorization of an allocation of federal power managed by WAPA based upon an investigation of the WAPA energy supply and financial structure as reviewed above. For the investigation to have meaning, the Standing Rock Sioux Tribe respectfully requests full participation. The results of the investigation will assist in formulation of specific provisions of legislation to implement the JTAC recommendations.

Sec. 5. Power (d)(1.) The draft bill provides just compensation for a total of $365,254,283 as amortized to 1987. This amount is derived from the amount of economic loss calculated at $59,083,572 in 1958 dollars, amortized to the present utilizing an average six-month treasury security rate of 6.52 percent. These power revenues shall provide compensation for economic loss resulting from the construction of the Oahe Dam and shall be paid to the Standing Rock Sioux Tribe, over a stream of years from a Treasury account for the following reasons:

The Tribe gave up, under the threat of a 5th Amendment taking, its best and most productive lands after a protracted effort to keep these lands from the Corps of Engineers. In this process the 1868 Treaty provision requiring 3/4 adult male signatures before any treaty land cession could take place was violated by the government. The tribal homelands in question -- 56,000 acres -- were to be used for the impoundment needed for the Oahe Reservoir.

This public works project greatly benefited certain sectors of society. The same project greatly cost, and continues to cost, the Standing Rock Sioux Tribe. This cost is calculated in terms of economic loss during the life span of the Oahe Dam Project. Tribal economic resources, which have never been paid, have been foregone by the Tribe.

The Standing Rock Sioux Tribe has taken a position that the costs for economic losses are, and have always been, legitimate project costs and should be viewed as such. Therefore, it is not inconsistent that just compensation be paid the Tribe from hydropower revenue as repayment costs assigned to hydropower. These costs should have been included in the original costs paid to build the dam. In other words, the low cost power rates of today's Pick-Sloan power was achieved by a project which never paid all original costs for its construction.

Since it was the economic base which the Tribe lost, it will be an economic base that the Tribe will re-establish with just compensation payments. The Tribe has opposed per capita redistribution of any payment as non productive and even, in some cases, destructive. It is the Tribe's intention that compensation will be programmed to generate investment capital for productive enterprises as well as investments in human capital such as education and socially worthwhile programs.

Tribal equity participation in the proposed American Indian Development Finance Institution (Senate Bill S.721) could also be financed through the Tribe's Redevelopment Program with

JTAC funding. In this way the Tribe may begin to diminish the dependency society which, in part, resulted from the taking of the Tribe's most productive economic lands for the Oahe Dam Project.

To replace the economic base lost, the Tribe will establish, with the compensation funds, a long term economic revitalization and development institution. This institution will be a serious investment driven project for economic development. Of indirect benefit to the United States from the Tribe's revitilization project will be, over the long run, a beneficial decrease in United States welfare transfer payments. The increase in federal taxes coupled with the decrease in welfare payments can be greater than the net increase in a household's income resulting from work created by productive investments (Trosper, Ron; Testimony Before the House Interior and Insular Affairs Committee on Indian Economic Development).

Sec. 6. Municipal, Rural, and Industrial Water Service.

The Tribe has long lacked adequate, safe water supplies for our communities. In many cases the present drinking water sources do not meet Safe Drinking Water Act standards. Therefore, the draft bill calls for development of municipal, rural and industrial water systems, as approved by the Tribe, for our Reservation.

Currently under Public Law 99-294, the Garrison Diversion Unit Reformation Act of 1986, provides

> "(c) The Secretary is authorized and directed to construct, operate, and maintain such municipal, rural and industrial water systems as he deems necessary to meet the economic, public health, and environmental needs of the -- Standing Rock -- Indian Reservation."

However, the Bureau of Reclamation has not been cooperative in furthering this authorization.

The Tribal Council of the Standing Rock Sioux Tribe has determined that the water supply of the Cannonball Community in the northeast quadrant of the Reservation is the first priority for MR&I development provided by P.L. 99-294. The Standing Rock Sioux Tribe completed preliminary planning for a community water supply in Cannonball in 1985. It is proposed to upgrade the preliminary planning for the Cannonball community. After planning efforts for the Cannonball community water supply have been concluded, the funding needs for additional construction will be determined. It is understood that approximately $8.0 million has been allocated to the Standing Rock Sioux Indian Reservation as authorized under P.L. 99-294. We anticipate a need of $350,000 to complete the remaining MR&I planning and design work for this Reservation with the $8.0 million authorization being used partially to fully construct the Standing Rock Sioux Tribe Rural Water Distribution Project.

Sec. 7 Excess Lands

The draft legislation calls for return to the Tribe of Reservation lands above 1,620 feet elevation which were taken by the Corps of Engineers for the Oahe project. The Tribe is informed that the Oahe Dam itself would not contain waters above this level. Therefore, lands above this level are truly in excess of any reasonable view of what is needed for the project. The draft legislation would still provide the Corps with a flowage easement over all lands in the current Taking Area. But the restoration of these lands to the Tribe would mean they could be effectively used for the benefit of the Tribe, which is not now the case.

In 1985 the Corps of Engineers completed an Executive Order 12112 Survey and determined that there are no excess lands at Lake Oahe. The Tribe believes that determination was erroneous. The Tribe has identified 19,609.82 acres of lands in the Taking Area on the Reservation above the 1,620 feet elevation level. These lands are unused and unneeded for project purposes. The lands lie between Cannonball, North Dakota and Mobridge, South Dakota. The Corps of Engineers has indicated these lands are needed for recreation, fish and wildlife purposes. The Corps does not even claim they are needed for flood control purposes. Certainly the Tribe is better suited than the Corps to determine the appropriate recreation, fish and wildlife uses on the Reservation. These lands must be returned.

To locate the excess land in the Taking Area the Tribe used Geological Survey maps showing elevations and the Corps line as recorded by the Bureau of Indian Affairs. The acreage was determined by using a dot matrix method and a planimeter. This is a method commonly used by Land Operations, Bureau of Indian Affairs to measure acreage.

The majority of these 19,609.82 acres above 1,620 feet elevation are good range land and farm land -- sufficient to support 817 head of cattle year long if it was used for grazing. These lands could provide substantial income to the Tribe if used for grazing or growing crops.

Sec. 14 Protection of Reserved Water Rights.

The draft bill provides that nothing in the Act shall be deemed to diminish the Tribe's reserved water rights. When the Great Sioux Reservation was established in 1868, enough water was reserved to fulfill the purposes of the Reservation.

Six of the 10 JTAC recommendations relate to, concern or affect the use of the Tribe's reserved water rights. Moreover, the basis for additional financial compensation is in part based on the Tribe's water rights.

With increasing competition for a limited source of water (the Missouri River) the Tribe finds itself in a position to seek federal protection of all present and future uses of water. Without this protection the Tribe ultimately will be placed at the mercy of state courts. State courts, historically, are not sympathetic to or obligated to protect Indian Winters Doctrine water rights.

All interests (federal, tribal, state and private) recognize the value and importance water plays in economic development. Most recently, the Western Governors Association adopted Resolution 87-006, which addresses Indian Water Rights. While the Tribe recognizes their concerns and interests, the seniority of Indian water rights must prevail.

There are two primary conflicts. The first is with the Secretary of the Interior, who has refused and failed to exercise the federal Government's "trust" responsibility to Standing Rock, in regard to protecting the Tribe's water rights from both federal and state encroachments. The second major conflict is with the states who misinterpret and act contrary to established principles enunciated under the Winters doctrine, to the detriment of the Tribe. These conflicts are inseparable.

In that regard the Secretary (of the Interior) has (1) failed to exercise his trust responsibility and thereby placed the Tribe in and at the mercy of state courts; (2) permitted the violation of the Tribe's vested property rights in water; (3) cooperated with states and other interests in developing criteria to constrict the uses of Indian water rights; (4) subverted Indian water rights to state jurisdiction for the purposes of adjudication; (5) without authority from the Tribe, proceeded to formulate policies that are arbitrary, capricious and illegal; (6) forced legal and technical representation on the Tribe; and (7) prevented the Tribe, without basis, to implement the Tribe's Water Code by failing to lift a moratorium on tribal water codes imposed in the early 1970's.

The most logical methods to protect our water rights are:

(1) hold harmless the application of the McCarran Amendment (43 U.S.C. 666) as it pertains to Indian water rights adjudications regarding the Standing Rock Sioux Tribe;

(2) allow the Tribe to implement its Tribal Water Ordinance adopted in 1983; and

(3) allow the Tribe to hire its own technical experts and legal representation in all matters pertaining to Indian water rights.

Conclusion

The Tribe greatly appreciates this opportunity to testify on these important matters. We look forward to working with the Committee on this proposed legislation.

Respectfully submitted,

Charles W. Murphy
Chairman
Standing Rock Sioux Tribe

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
November 19, 1987

Thank you Senator Inouye and members of the Committee. My name is Mary Louise Defender Wilson. I am a Northern Dakota enrolled on the Standing Rock Reservation from Shields, North Dakota.

I have two statements, one dated November 18, 1987 which brings up other issues which need to be considered should the complicated legislation proposed receive further consideration.

We favor legislation to provide just compensation to the people for lands and suffering resulting from the Oahe Dam. Any legislation has to address the concerns set forth in the people's petition addressed to Senator Inouye and Senator Conrad. Your attention is directed to the fact that in addition to the disruption of their lives by forced removal, they were forced to go through a change of government. Oahe Bill became law September 2, 1958 and a new constitution February 11, 1959. Was this necessary? A life of demeaning poverty and paternalism is the lot of a majority of us from Standing Rock Reservation. The people need to experience that their signatures are meaningful and have some power. A close examination of their request will show that this is not a request for per capita payment but an attempt to address the question of justice. The stories told in "The Taken Land" reveal that only one person who lost 180 acres was permitted to buy only 6 acres. The other two families were not assisted to replace any land at all. Lack of information and time did not afford us an opportunity to collect more information from people who lost land in the Oahe Taking. All of these people should have their lands not flooded returned to them and to replace lost acreage. A commission composed of members representing those who lost land in the Oahe Taking, Standing Rock Tribal Council and the Standing Rock Landowners Association could manage the tribal lands and use the rentals to assist the elderly and incapacitated people.

Part 3 of the people's petition concerns the purchase of land under Section V of the Oahe Law. The people understand that those who lost land were to have priority in using funds under this appropria- to replace their lands. One does not find the name Bird Horse or Iron Cloud among the names. Neither Bone Club or Red Bird can be found. The first listing of these purchasers was available because our own Senator Burdick got it for the Standing Rock Landowners' Association in 1978. You will note that 3/4 of the purchasers were Bureau of Indian Affairs employees and relatives, tribal council members and their relatives and other employees. The people would like to see these declared null and void. Section 4 is addressed in Mr. Bird Horse's statement.

A copy of the statement presented at the JTAC hearings held in Fort Yates in January, 1986 is attached. The Committee's attention is directed to a memorandum dated September 5, 1972 wherein the Aberdeen Area Office makes a weak attempt to address the Section V Land Sale Scam, calling it a questionable practice.

The traditional people realize that in order for the Dakota/Lakota Sioux to survive, we have to be united as we once were on our Great Sioux Reservation. We have to make straightforward stands against efforts to continue divisive action against us. The creation of the Garrison Unit Joint Tribal Advisory Committee does not include our relatives on the Cheyenne River, Crow Creek, Lower Brule, Yankton, Rosebud and Oglala Reservations. They all have a right to the power generated on the Missouri River. Many of us are so poor, we would

In closing I would like to share with you a photo of a huge dike built for the railroad. If the Corps of Engineers can build a huge dike, they can build to establish stable shorelines which can bw reforested and not be depressing to look at.

The technology proposed in the legislation has to be re-evaluted to determine its applicability to the needs and style of the people on Standing Rock Reservation. These are the plans related to irrigation and recreation.

From : Standing Rock Landowner`s Association
To : Senate Select Committee on Indian Affairs
Date: November 18, 1987
Subject: Forms of Compensation for Oahe Dislocation

The following issues need to be addressed by the Senate Select Committee reviewing the Bill for review of compensation to the Standing Rock Sioux Tribe for land taken:

- repatriation of taken land not flooded to the original owners or their descendants, and all rights thereof
- reforestation of all shoreline areas on the reservation
- feasibility study on the use of dikes and other means to reclaim significant tracts of land (i.e. Grand River area)
- electricity, water and other services set-up and distributed free-of-charge to residents near the Oahe shore, and other Native people in economically depressed circumstances
- feasibility study followed by pilot projects and demonstration development, with a built-in evaluation system, on possible recreation and irrigation development on Standing Rock
- formulating a committee to oversee, evaluate, and adjudicate all projects, uses of compensation funds, and administrative procedures, for the fair and equal distribution and compensation to Native people on Standing Rock Reservation, both as individuals and in groups
  (this committee should be composed of members representing Standing Rock Tribal Council, Standing Rock Landowner`s Association, representatives for those who lost land or homes, and an official from the United States government)
- polling of Indian people, especially those who lost land and traditionals, as to their desires about forms of compensation

Please note that these issues are in addition to the points brought out in the bill currently under consideration.

These suggestions are brought up in order to better represent all Indian people on Standing Rock Sioux reservation, to ensure fair compensation, and maintain, as realistically as possible, a relatively democratic approach toward the proposed development.

Mary Louise Defender Wilson, Resentative
Standing Rock Landowner`s Association
Standing Rock Sioux Reservation
North and South Dakota

STATEMENT TO THE GARRISON UNIT JOINT TRIBAL ADVISORY COMMITTEE

At Fort Yates, North Dakota January 9, 1986

We, the undersigned, represent traditional ideology and philosophy of the Dakota and Lakota Nation and trace our ancestry back to mythical time and place right in the areas now called North and South Dakota, Montana, Nebraska, Wyoming and the Canadian Provinces of Manitoba, Saskatchewan and Alberta.

During the period of 1870 to 1890 our ancestors were confined to these Reservations including Standing Rock and the Fort Peck Reservation in Montana and the Cheyenne River Reservation in South Dakota. Injustice after injustice has been perpetrated upon us which included the eroding away of our traditional government, which was a TRUE DEMOCRACY. Over the period of 100 years, we have yearned for justice, equality and opportunity, but to no avail.

We will not go into the situation with the Black Hills and the very recent clearing of the titles for an undetermined acreage for only $1.5 million, the case known as Docket 119. However, the case entitled Docket 74 which is pending before the Supreme Court of the UNITED States concerns lands which are located between the James River and the Missouri and for which the Middle Dakota Nation (called Yanktonai by historians) have never surrendered their title. This matter must be adequately researched and documented before any action is taken to further damage these lands by flooding with Missouri waters. The research presented in this case by the United States and Standing Rock Tribal Council's attorney is competely in error.

The Act of September 2, 1958, 72 Stat. 1762 - Taking of lands on the Standing Rock Reservation for the Oahe Dam is another chapter in the continued genocide practices of the United States. In connection with the Congressional law and the dispersion of the funds, a constitution was forced upon the people which put them under a system of government without checks and balances. As a result a majority of the full blood, traditional people were not givern an opportunity to replace the lands they lost in the Oahe Taking Area. Instead Bureau of Indian Affairs employees, tribal council members and relatives and other person who were living far away from the Missouri River shores were the majority allowed to use the funds authorized under Section V of the foregoing Act. Before any further disturbance of the Missouri Waters occurs, the individuals/ their descendants who lost land to the Oahe Taking should be allowed to replace their lands. The list is attached and we suggest that you research to determine how many of those individuals lost land.

There are persons who purchased lands contrary to the laws of the United States- Section 437 of Title 18 USC, and amended by the Act of June 17, 1980 (94 Stat.544). When some of our group met with the then United States Attorney in Bismarck, ND, he told us that he was there to protect the employees of the United States. It is a very peculiar system of justice that we live under. These matters must be addressed before any further disturbance is made.

A complete file of the documents are enclosed in cluding the Act of June 17, 1980 and our petition to Senator Mark Andrews pertaining to Docket 119.

As traditional people, we know that the earth is blessed with awesome power (WAKAN) and the disturbance and lack of harmony with any of its elemets - water, dirt, animals and plants brings destruction and death. That speaks for itself as it applies to us. DO NOT PROCEED WITH GARRISON DIVERSION until there is healing.

Whenever officials of the United States meet with leaders of other countries such as Russia and we hear that there will be accusations made of those leaders of human rights violations and that civil rights of the citizens of those countries are not being protected, we wonder where the leaders of the United States are directing their attention. Right under their noses here on the reservations there is no democracy and our people are dying because they have no opportunity.

Respectfully submitted,

"SECTION V" SALES OF TRIBAL LAND

Attached are the Act of Congress which authorized the purchase and resale of tribal land. The general interpretation is that it was included in the Oahe Settlement Act to help those persons who lost land in the Taking Area to replace lands flooded. Many fullblood traditional type people lost their homes and vast acreages, however, no attempt was made to help them purchase land. Following that group, those people who were in need of rehabiliation and who were living on heirship lands were to have been aided under this section of the Act.

According to our information very few persons whose lands were lost were assisted to purchase other lands. It should be noted that Mr. Harry Fast Horse, a fullblood traditional type person, lost his home and land. He left what funds he got for this loss in the Bureau of Indian Affairs planning to buy replacement lands. He was neglected all these years until the Landowners Association began to bring this matter to the officials attention. The local Bureau Realty Staff than tried to process a sale for him, but the inflation rate was so high from 1958 to 1977 that he could barely get 6 acres. Meanwhile, the wealthy, employed and others purchased land under the program.

The Tribal Council has not even acknowledged receipt of our letter of April 30, 1979.

Public Law 85-915
85th Congress, H. R. 12662
September 2, 1958

AN ACT

72 Stat. 1762.

To provide for the acquisition of lands by the United States required for the reservoir created by the construction of Oahe Dam on the Missouri River and for rehabilitation of the Indians of the Standing Rock Sioux Reservation in South Dakota and North Dakota, and for other purposes.

Oahe Dam and Reservoir Project, Mo.

Acquisition of land.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in furtherance of the Oahe Dam and Reservoir project as authorized by the Act of December 22, 1944 (58 Stat. 887, 891)—

(a) title to the entire interest, excluding the interest in oil, gas, and all other minerals of any nature whatsoever, in approximately 55,993.82 acres of land within the taking area described in this Act on the Standing Rock Reservation in South Dakota and North Dakota, in which Indians have a trust or restricted interest, and title to any interest Indians may have in the bed of the Missouri River so far as it is within the boundaries of the Standing Rock Reservation, are hereby taken by the United States for the Oahe project on the Missouri River and in consideration thereof the United States will pay to the Standing Rock Sioux Tribe and the individual Indian owners out of funds available for the Oahe Dam and Reservoir project:

(1) a sum aggregating $1,952,040, to be disbursed in accordance with schedules prepared by the Missouri River Basin project investigation staff; and

(2) the amount of $3,299,513, which shall be in settlement of all claims, rights, and demands of the tribe and individual Indians arising out of the taking under this Act, to be disbursed in accordance with the provisions of section 2 hereof;

(b) upon a determination by the Secretary of the Army, filed among the appropriate land records of the Department of the Interior within two years from the date of enactment of this Act, that any of the lands described in this Act are not required for Oahe project purposes, title to such land shall be revested in the former owner; and

(c) if the Secretary of the Army determines that additional Indian lands, tribal or individual, within the Standing Rock Reservation are required for project purposes, he may acquire such lands by purchase with the approval of the Secretary of the Interior, or by condemnation.

Standing Rock Sioux Tribe. Payments.

SEC. 2. The payments authorized by this Act, less the amount heretofore deposited by the United States in the case entitled "United States of America, Plaintiff vs. 2,005.32 acres of land etc. and Sioux Indians of Standing Rock Reservation et al., Defendants", civil numbered 722 filed in the United States District Court for the District of South Dakota, shall be deposited to the credit of the Standing Rock Sioux Tribe in the Treasury of the United States to draw interest on the principal at the rate of 4 per centum per annum until expended. The sum of $1,952,040 shall be allocated in accordance with the tract and ownership schedules to be prepared by the Missouri River Basin investigation staff after consultation with the tribal council to correct known errors. The amounts allocated to the lands owned by individual Indians shall be credited to their respective individual Indian money accounts. No part of the compensation for the property taken by this Act shall be subject to any lien, debt, or claim of any nature whatsoever against the tribe or individual Indians except delinquent debts owed by the tribe to the United States or owed by individual Indians to the tribe or to the United States. One-half of the amount

Limitation.

paid pursuant to subsection 1 (a) (2) of this Act shall be consolidated with the rehabilitation appropriation authorized by section 5 of this Act and shall be expended in accordance with the provisions of section 5: *Provided*, That a sum not to exceed $720,546 shall be available from said remaining one-half to pay expenses, costs, losses, and damages of members of the tribe as a direct result of moving themselves and their possessions on account of the taking under section 1 of this Act. No part of such amounts shall be used for per capita payments.

Indian Cemeteries, Monuments, etc.

SEC. 3. The Secretary of the Army, out of funds appropriated for the construction of the Oahe project other than those authorized by this Act, shall relocate and reestablish such Indian cemeteries, tribal monuments, and shrines within the area taken under this Act as the Standing Rock Tribal Council shall select and designate, with the approval of the Secretary of the Interior.

Reconstruction of facilities.

SEC. 4. The Secretary of the Army is authorized and directed, out of funds appropriated for the Oahe project, to protect, replace, relocate, or reconstruct any existing essential agency facilities on the Standing Rock Sioux Reservation, including schools, hospitals, service buildings, agents' and employees' quarters, roads, bridges, and incidental matters or facilities in connection therewith, which the Secretary of the Interior determines will be impaired by the construction of the Oahe project.

Appropriation.

SEC. 5. There is authorized to be appropriated the further sum of $6,960,000, which shall be deposited in the Treasury of the United States to the credit of the Standing Rock Sioux Tribe to draw interest on the principal at the rate of 4 per centum per annum until expended for the purpose of developing individual and family plans, relocating, reestablishing, and providing other assistance designed to help improve the economic and social conditions of all recognized members of the Standing Rock Sioux Tribe regardless of residence on the reservation: *Provided*, That such fund may be expended in accordance with plans and programs approved both by the tribal council and the Secretary of the Interior: *And provided further*, That no part of such funds shall be used for per capita payments, or for the purchase of land by the tribe except for the purpose of resale to individual Indians in furtherance of the rehabilitation program authorized by this section.

Mineral rights.

SEC. 6. All minerals, including oil and gas, within the area taken by this Act shall be and hereby are reserved to the tribe or individual Indian owners as their interests may appear, but the exploration, exploitation, and development of the minerals, including oil and gas, shall be subject to all reasonable regulations which may be imposed by the Secretary of the Army for the protection of the Oahe project.

Rights in taking area.

SEC. 7. Members of the tribe now residing within the taking area of the project shall have the right without charge to remain on and use the lands taken by this Act until required to vacate in accordance with the provisions of this Act.

SEC. 8. Up to sixty days before the individual landowners are required to vacate the land in accordance with the provisions of this Act, they shall have the right without charge to cut and remove all timber from their respective lands and to salvage the improvements on their respective lands but, if said rights are waived or not exercised within the time limit herein specified, the tribe, through the tribal council, may exercise the rights: *Provided*, That the salvage permitted by this section shall not be construed to be compensation.

Schedule for vacating.

SEC. 9. (a) Except as provided in subsection (b), the schedule under which the tribe and the members thereof shall vacate the taking area shall be as follows:

(1) Little Eagle and Wakpala districts, within eight months from the date of this Act;

(2) Kenel district, within twelve months from such date;
(3) Agency district, within eighteen months from such date: and
(4) Cannonball district, within twenty-four months from such date.

(b) The Chief of Engineers, subject to approval by the Secretary of the Interior, may make such changes in the schedule provided in subsection (a) of this section as he deems necessary, except that, in any event, all lands within the taking area shall be vacated within two years after that date on which the Missouri River is diverted through the tunnels at the Oahe Dam or such prior date as the Chief of Engineers may fix, with the approval of the Secretary of the Interior.

Use of land.

Sec. 10. After the Oahe Dam gates are closed and the waters of the Missouri River impounded, the said Indian tribe and the members thereof shall be given exclusive permission, without cost, to graze stock on the land between the water level of the reservoir and the exterior boundary of the taking area. The said tribal council and the members of said Indian tribe shall be permitted to have, without cost, access to the shoreline of the reservoir, including permission to hunt and fish in and on the aforesaid shoreline and reservoir, subject, however, to regulations governing the corresponding use by other citizens of the United States.

Authorization to purchase and sell certain lands.

Sec. 11. For the purposes of (1) providing substitute land for individual Indians whose land is within the taking area, (2) consolidating land holdings, and (3) eliminating fractionated heirship interests within the reservation, the Secretary of the Interior is authorized to purchase, with funds made available by such individual Indians or by the tribe, land or interests in land, and to sell tribal land upon request of the tribe, but no service charge shall be made by the United States. The land selected by and purchased for individual Indians may be either inside or outside the boundaries of the Standing Rock Sioux Reservation as diminished. Title to any land or interests in land acquired within the boundaries of the reservation shall be taken in the name of the United States in trust for the tribe or the individual Indian for whom the land is acquired, and title to any land or interests in land acquired outside the boundaries of the reservation shall be taken in the name of the individual for whom it is acquired. Trust title shall be subject to the laws and regulations applicable to other trust titles within the reservation.

For the purposes of this section, the Secretary of the Interior is also authorized to partition or sell individually owned land in which all interests are in a trust or restricted status upon request of the owners of not less than a 25 per centum interest in the land. Any such sale shall be by competitive bid, except that with the concurrence of the owners of not less than a 25 per centum interest in the land, any owner of an interest in the land, or the tribe, if the land is within the Standing Rock Sioux Reservation, shall have the right to purchase the land within a reasonable time fixed by the Secretary prior to a competitive sale at not less than its appraised value. If more than one preference right is exercised, the sale shall be by competitive bid, limited to the tribe and to the persons entitled to a preference. The Secretary of the Interior may represent for the purpose of this paragraph any Indian owner who is a minor, or who is non compos mentis, or under any other legal disability, and, after giving reasonable notice of the proposed sale by publication, may represent an Indian owner who cannot be located, and he may execute any title documents necessary to convey a marketable and recordable title.

Nothing in this section shall be construed to diminish the authority to acquire, sell, or exchange land that is contained in other provisions of law.

72 Stat. 1764.

72 Stat. 1765.

Restriction. SEC. 12. No part of any expenditure made by the United States under any or all of the provisions of this agreement and the subsequent acts of ratification shall be charged as an offset or counterclaim against any tribal claim which has arisen under any treaty, law, or Executive order of the United States prior to the effective date of taking of said land as provided for in section 1 hereof and the payment of Sioux benefits as provided for in section 17 of the said Act of March 2, 1889 (25 Stat. 888), as amended, shall be continued under the provision of section 14 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), on the basis now in operation without regard to the loss of tribal land within the taking area under the provisions of this agreement.

25 USC 474.

Reimbursement. SEC. 13. The Secretary of the Treasury, upon certification by the Secretary of the Interior, shall reimburse the Standing Rock Sioux Tribe for fees and expenses incurred in connection with the taking of Indian lands within the Standing Rock Sioux Reservation for the Oahe project: *Provided*, That such reimbursable fees and expenses do not exceed in the aggregate $135,000: *Provided further*, That attorney fees shall be paid under the terms of a contract approved by the Secretary of the Interior.

Rejection of payment. SEC. 14. Any individual member of the Standing Rock Sioux Tribe shall have the right to reject the sum tendered to him as payment in accordance with the schedules to be prepared by the Missouri River Basin investigation staff by filing within one year from the date of this Act a notice of rejection with the Chief of Engineers, United States Army, Washington, District of Columbia. If the land of any Indian rejecting payment is included in condemnation proceedings heretofore instituted, the court in those proceedings shall proceed to determine the just compensation to which the individual is entitled and, if the land is not included in such condemnation proceedings, jurisdiction is hereby conferred upon the United States District Court for the District of South Dakota, or the United States District Court for the District of North Dakota, as the case may be, to determine just compensation in accordance with procedures applicable to the determination of just compensation in condemnation proceedings.

Court costs. No court costs shall be charged against an individual but all other costs and expenses, including counsel fees, shall be at the contesting individual's expense. If the amount fixed by the court exceeds the amount theretofore tendered to the individual, the Secretary of the Army shall deposit the difference in court; if the amount fixed by the court is less than the amount theretofore tendered to the individual, the difference shall be credited to the United States.

Appropriations. SEC. 15. There is hereby authorized to be appropriated such amounts as may be necessary for the purposes of this Act.

Definition. SEC. 16. Subject to the provisions of section 1 of this Act, the taking area referred to in this Act and the land for which the compensation of $1,952,040 has been allowed under this Act, containing approximately 55,993.82 acres, is the land defined in report numbered 134, Missouri River Basin investigation project, and delimited on a map entitled "Map Showing Tribal and Individual Indian Restricted and Trust Land of the Standing Rock Sioux Reservation Acquired by the United States for the Oahe Project and Forming the Basis for the Agreed Sale Price of $1,952,040 Under an Agreement Dated March 24, 1958, Between the United States and the Standing Rock Sioux Tribe" on file in the Bureau of Indian Affairs.

Sec. 17. All funds authorized by this Act paid to the tribe and individual Indians shall be exempt from all forms of State and Federal taxation. Tax exemption.

Approved September 2, 1958.

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
ABERDEEN AREA OFFICE
820 SOUTH MAIN
ABERDEEN, SOUTH DAKOTA 57401

IN REPLY REFER TO:
Real Prop. Mgmt.
Ten. & Mgmt.
Standing Rock

SEP 5 1972

Memorandum

To: Acting Superintendent, Standing Rock Agency

From: Office of the Area Director

Subject: Amendments of Land Management Program

We have reviewed, to the extent possible with the records at hand here, the amendments to the Standing Rock Sioux Tribe's Land Management Program, embodied in resolution No. 179-72.

We suggest the difficulty of a thorough review of the amendments for the reason that over the years there have been a considerable number of amendments throughout, but a complete and current draft of the program does not appear to have been put together. We believe a new current draft would be helpful to the Tribe in administering the program.

Although there is no disposition here to formally disapprove any part of the amendments, we feel it incumbent upon this office to observe that any arrangement whereby the tribe disposes of land to select individuals in the tribal membership at less than current fair market value is a questionable practice.

The amendments are approved.

ASSISTANT Area Director

RECEIVED
SEP 6 1972
STANDING ROCK AGENCY
FORT YATES
NORTH DAKOTA

Ina'Unchi' Maka ke, Wa ni kan' Onsi Ma la yo!

STANDING ROCK RESERVATION LANDOWNERS ASSOCIATION

April 30, 1979

OFFICERS

PRESIDENT
Joseph A. Walker
P.O. Box 49
Fort Yates, ND 58538

VICE PRESIDENT
D. Spotted Horse
Mobridge, SD 57601

TREASURER
P. One Feather
McLaughlin, SD 57642

SECRETARY
Mary L. Wilson
P.O. Box 383
Fort Yates, ND 58538

DIRECTORS
Gary Buckley
McLaughlin, SD 58642
Daniel Defender
Fort Yates, ND 58538
Agatha Fool Bear
Cannon Ball, ND 58528
Thomas Iron Cloud
Little Eagle, SD 57639

Mr. Pat McLaughlin, Chairman
Standing Rock Tribal Council
Fort Yates, N.D 58538
and
Members of the Standing Rock Tribal Council (14)

Ladies and Gentlemen:

The United States Government in Public Law 85-915, authorized certain money to be granted to the Standing Rock Sioux Tribe for the purpose of relocating, re-establishing, and providing other assistance, designed to help improve the economic and social conditions of all recognized members of the Tribe.

Our Association recently came into possession of the attached list of those persons who purchased Section V land. This report was submitted to us from the Deputy Assistant Secretary of Interior for Indian Affairs on October 13, 1978. Since that time many meetings and discussion have been had with a significant number of the people of this Reservation. The following are comments received by us on each of the purchases: (Please bear in mind that the first question raised was: Were these people the ones who lost land in the Taking Area and the second one is: Are these people poor, in need of rehabilitation and are they using the land themselves?)

1. Leonard Alkire - Purchase should be for 160 acres only.
2. David Blackcloud - If replacing land - acreage lost in Taking Area - otherwise 160 acres only.
3. Ivan Blackcloud - Purchase should be for 160 acres only and if matter of BIA employment resolved.
4. Leta Balliett - Cancelled since family already had sufficient land holdings and she was not in need of rehabilitation.
5. Duane Claymore - Cancel all purchases as individual has more than enough land holdings and he is a brother-in-law to Albert Bud Gipp, now employed in Branch of Realty.
6. Samuel Claymore, Jr. - Cancel all purchases as he is not using these lands personally and he may had unfair advantage in knowing that these land were available through his brother in law Albert Bud Gipp and he has other purchased lands and not in need of rehabilitation.
7. James Chapman - Purchase is not questioned if using land himself.
8. Clayton Dwarf - Purchase is not questioned if using land himself.
9. Margaret Dunn - Purchase of 160 acres not questioned if replacing land lost in Taking Area and if the relationship to Albert Bud Gipp is satisfactorily resolved - she is his mother.
10. Ray Dunn - Cancel all purchases as he is a brother to Albert Bud Gipp.

Present Homeland of the Blackfeet, Hunkpapa, and Upper and Lower Yanktonai Bands of the Dakota-Lakota

11. Harry Fast Horse - Arrangements be made as fast as possible for him to purchase the full acres to replace what he lost and that BIA and Tribal Council get the money for him to make up the difference as to what he lost due to inflation.

12. Henry Gayton, Jr. Cancel all purchases as he is not in need of rehabiliation and is one of highest salaried BIA employees, and he has other lands.

13. Albert Gipp - Cancel all purchases as he is employed by the BIA in the Branch of Realty.

14. Francis J. Gipp Cancel all purchases as he is an uncle to Albert Bud Gipp and he did not lose land in the Taking Area.

15. Robert Gipp - Cancel all purchases as he is a first cousin to Albert Bud Gipp and is a BIA employee.

16. Alvina Gray Bear - Purchase is not questioned as she is using the land herself and is not a wealthy person.

17. Joe Harrison - Purchase should be for 160 acres only.

18. Joe Keeps Eagle Jr. Purchase should be for 160 acres only and if matter of BIA employment is resolved, and if using land himself.

19. George Keeps Eagle Purchase should be for 160 acres only and if in need of rehabiliation (wife is a BIA employee.)

20. Virginia McLaughlin - Purchase should be for 160 acres only.

21. John McLaughlin = Purchase is not questioned as he is using the land himself and is not a wealthy person.

22. Lavina McLaughlin - Purchase should be cancelled as the family has considerable land holdings, not in need of rehabilitation and did not lose land in Taking Area.

23. Leta McLaughlin Balliett - Cancel since family already had sufficient land holdings and she was not in need of rehabilitation and did not lose land in taking area.

24. Samuel Netterville - Questions about the reason for another high salaried employee purchasing land were raised since he was not in need of rehabiliation and did not lose land in Taking Area. Purchase should be limited to 160 acres.

25. Hugo Ploog - Questions were raised about the need for rehabiliation since he lost no land in the Taking Area and also about his degree of Indian blood. Is he 1/2 or more Indian.

26. Laura Silk - Purchase for 160 acres only.

27. Robert Sherwood - Questions raised as to whether or not this person was replacing land lost in Taking Area - otherwise he is not in need of rehabilitation.

28. Peter Taken Alive - No questions raised except for BIA employment, and if using land himself.

29. Franklin Thomas - Cancel purchase as person is not in need of rehabilitation, did not lose land in Taking Area and is he 1/2 or more Indian blood.

30. Albert Two Bears - Questions raised as to whether or not this person was replacing land lost in Taking Area - otherwise he is not in need of rehabiliation. Wife is steadily employed.

31. Kenneth Ward - Cancel purchase as person is not in need of rehabiliation, did not lose land in Taking and is he 1/2 or more Indian blood.

32. Jack Ward - Cancel purchase as person is not in need of rehabilitation did not lose land in Taking Area and is he 1/2 or more Indian blood.

33. Charles White - No questions since it appears that purchaser is using land himself.

34. Arthur Yellow - No question if he is using land himself.

This is a lengthy report but there is considerable concern and dissatisfaction on the Reservation over the abuse of this Program. As you will note by the analysis at the end of the report, much of this acreage was purchased by Tribal Council Members and their Relatives.

The injustice of the manner in which this program has been handled is a matter of great concern. No further transaction should be made to allow new purchases, and existing holders should not dispose of these lands until a resolvement is made. The land was purchased in the name of the Tribe which is all the people, yet the Bureau of Indian Affairs allowed the land to be sold without these owners consent or a referendum vote by the people. This is a very serious matter.

As President of the Association, I have been asked to submit to your attention the thinking of those people who commented on this matter.

Sincerely yours,

Joseph A. Walker
President

SECTION V

PURCHASER	ALLOTMENT NO.	ACRES	DATE OF COUNCIL ACTION
1. Alkire, Leonard	852	640.0	8-8-74
2. Black Cloud, David	614	320.0	1-9-75
3. Black Cloud, Ivan	2217	320.0	9-4-74
4. Balliett, Leta	2452	170.0	6-1-70
5. Claymore, Duane	625	160.0	11-21-72
Claymore, Dunae	1731	160.0	10-10-75
Claymore, Duane	3153	320.0	10-10-75
Claymore, Duane	3456	320.0	11-21-72
Claymore, Duane	T5013	480.0	3-1-67
6. Claymore, Samuel, Jr.	2205	160.00	10-10-75 -12-9-76
Claymore, Samuel, Jr.	2626	160.00	10-10-75- 12-9-76
7. Chapman, James	1834	80.00	10-10-75
8. Dwarf, Clayton	1799	160.00	5-10-74
9. Dunn, Margaret	1883	480.87	5-10-74
Dunn, Margaret	1886	160.00	5-10-74
10. Dunn, Ray	1974	313.80	8-8-74
11. Fast Horse, Harry	2126	6.66	4-6-77
12. Gayton, Henry , Jr.	1723	160.00	5-10-74
Gayton, Henry , Jr.	1929	320.00	5-10-74
Gayton, Henry , Jr.	3767	232.90	5-10-74
13. Gipp, Albert	1112	150.00	8-7-78
Gipp, Albert	3319	160.00	9-4-75
14. Gipp, Frances J.	1847	80.00	5-6-70
15. Gipp, Robert	2052	80.00	4-15-75
16. Gray Bear, Leo	1745	159.85	10-7-64
Gray Bear, Alvina		Assignment	9-1-65
17. Harrison, Joe	1908	480.00 Correction	10-8-75 6-3-76

PURCHASER	ALLOTMENT	ACRES	DATE OF COUNCIL ACTION
18. Keeps Eagle, Joe Jr.	1860	140.00	7-12-74
Keeps Eagle, Joe Jr.	1861B	40.00	7-12-74
Keeps Eagle, Joe Jr.	2064	30.00	2-15-78
19. Keeps Eagle, George	2217	320.00	3-15-74
20. McLaughlin, Virginia	491	240.00	10- 7-74
McLaughlin, Virginia	492	150.00	10- 7-74
McLaughlin, Virginia	586	655.52	2- 8-73
21. McLaughlin, John	2421	5.00	2-11-70
22. McLaughlin, Lavina	2421	155.00	2- 8-73
23. McLaughlin, Leta	4717	157.65	3-13-73
24. Netterville, Samuel	764	480.00	5-10-74
25. Ploog, Hugo	2879	160.00	3- 1-72
26. Silk, Laura	1584	200.00	9- 7-66
27. Sherwood, Robert	4296	160.00	2- 8-73
28. Taken Alive, Peter	357	160.00	5-10-74
29. Thomas, Franklin	1196	160.00	4-15-75
30. Two Bears, Albert	2098	150.00	3-15-74
Two Bears, Albert	2114	60.00	3-15-74
31. Ward, Kenneth	558	160.02	9- 4-75
Ward, Kenneth	3175	320.00	9- 4-75
32. Ward, Jack	3873	640.00	9- 4-75
33. White, Charles	478	160.00	10- 7-74
34. Yellow, Arhtur	1811C	13.33	7-23-75

Purchases by Trib al Council Members & Relatives)	4.784.35 A - 43.7 %
Purchase by BIA employees and Relative)	2,446.23 A - 22.3 %
Purchases by Tribal Directors (employees)	840.00 A - 7.7 %
Other Purchases	2,880.02 A - 26.3 %

Name	Allot. #	Discription
Duane Claymore	T5013	NE¼, Section 20; W½ Section 20, T. 21 N., R. 30 E. 480.ac.
Clayton Dwarf	1779	SE¼ Section 30, T. 131 N., R. 80 W. 160.ac.
Joe Harrison	1908	W½, SE¼ Section 28, T. 132 N., R. 81 W. 480.ac.
Joe Keeps Eagle Jr.	1860	S½N½N½NW¼, S½N½NW¼, S½NW¼ Section 29, T. 132 N., R. 80 W.
Joe Keeps Eagle Jr.	1861B	NW¼NE¼ Section 29, T. 132 N., R. 80 W. 180.ac.
Joe Keeps Eagle Jr.	2064	W½NW¼SW¼, W½E½NW¼SW¼, Section 13, T. 132 N., R. 80 W. 30.ac
Sam Nettervill	764	NE¼ Section 14; W½ Section 13, T. 22 N., R. 28 E. 480.ac.
Peter Taken Alive	357	NW¼ Section 28 T. 19 N., R. 27 E. 160.ac.
Jack Ward	3873	Section 21, T. 19 N., R. 25 E. 640.ac.
Charles White	478	NE¼ Section 11, T. 20 N., R. 27 E. 160.ac.
Charles White	3193	S½ Section 32, T. 23 N., R. 25 E., 320.ac.
Gillard White	3055	SE¼ Section 2, T. 20 N., R. 27 E. 160.ac.
Arverdell See Walker	1822	SW¼ Section 17, T. 131 N., R. 80 W. 160.ac.
Pat Kelly	1804	W½ Section 25, T. 131 N., R. 81 W. 320.ac.

Purchaser	Allot. #	Discription
Leonard Alkire	852	S½ Section 32, T. 23 N., R. 29 E. 640. ac.
Ivan Black Cloud	2217	S½ Section 26, T. 133 N., R. 80 W. 320. ac.
Sam Claymore Jr.	2205	SW¼ Section 13, T. 131 N., R. 83 W.
Sam Claymore Jr.	2626	SE¼ Section 35, T. 131 N., R. 85 W. 320. ac.
Albert Gipp	1112	S½NE¼, NW¼NE¼, W½NE¼NE¼, SE¼NE¼NE¼ Section 24, T. 19 N., R. 24 E. 150. ac.
Albert Gipp	3319	S½NE¼ Lots 1 & 2 Section 2, T. 18 N., R. 24 E. [illegible] 159.68
Tom Iron	387	S½ Section 27, T. 20 N., R. 27 E. 320. ac.
George Keeps Eagle	2217	S½ Section 27, T. 133 N, R. 80 W. 320. ac.
Virginia McLaughlin	586	SE¼ Section 35, T. 21 N., R. 28 E.; SE¼SW¼, S½N½, Lots 1,2,3, & 4 Section 1, T. 20 N., R. 28 E. 655.52 ac.
Tom Iron	388	S½NE¼, SE¼NW¼ Sec. 27, T. 20 N., R. 27 E., 120. ac.

PAID IN FULL

Purchaser	Allot.#	Discription	
David Black Cloud	614	N½ Section 17, T. 21 N., R. 30 E.	320. ac.
Duane Claymore	625	NW¼ Section 28, T. 21N., R. 30 E.	160. ac.
Duane Claymore	1731	NW¼ Section 29. T. 129 N., R. 80 W.	160. ac.
Duane Claymore	3153	E½ Section 16, T. 130 N., R. 84 W.	320. ac.
Duane Claymore	3456	N½ Section 33, T. 21 N., R. 30 E.	320. ac.
James Chapman	1834	S½NW¼ Section 22, T. 131 N., R. 80 W.	80. ac.
Margaret Dunn	1883	S½, S½NW¼, Lots 3 & 4 Section 2, T. 131 N., R. 80 W.	480.7
Margaret Dunn	1886	NE¼ Section 11, T. 131 N., R. 80 W.	160. ac.
Ray Dunn	1974	53200/109350 interest in Section 9, T. 132 N., R. 80 W.	311
Henry Gayton	1723	SW¼ Section 25, T. 130 N., R. 82 W.	160. ac.
Henry Gayton	1929	SE¼, NW¼ Section 16, T. 130 N., R. 81 W.	320. ac.
Henry Gayton	3767	SE¼NW¼, E½SW¼, Lots 2,3 & 4 Section 19, T. 130 N., R. 81 W	232.9
Francis J. Gipp	1847	N½SW¼ Section 27, T. 131 N., R. 80 W.	80. ac.
Robert Gipp	2052	E½NE¼ Section 10, T. 132 N., R. 80 W.	80. ac.
Alvina Gray Bear	1745	S½NE¼, Lots 1 & 2 Section 4, T. 130 N., R. 80 W.	159.85.
Virginia McLaughlin	491 & 492	E½SE¼, SW¼SE¼, S½NW¼SE¼, S½N½NW¼SE¼, Section 29, and SW¼, W½SE¼, Section 29, T. 21 N., R. 28 E.	390. ac.
John McLaughlin	2421	N½NW¼NW¼SW¼ Section 2, T. 131 N., R. 83 W.	5. ac.
Lavina McLaughlin	2421	E½SW¼, E½NW¼SW¼, S½NW¼NW¼SW¼, SW¼NW¼SW¼, SW¼SW¼, Section 2 T: 131 N. R.	155. ac.
Leta McLaughlin	2452	S½S½SE¼NW¼, S½S½S½NE¼, NE¼SW¼, N½SE¼, N½SE¼SE¼ Section 11 T. 131 N., R.	170. ac.

Leta McLaughlin	4717	E½NW¼ Lots 1 & 2 Section 18, T. 131 N., R. 83 W. 157.65 ac.
Harold Murphy	T3500	Lots 1 & 2 S½NE¼ Section 2, T. 131 N., R. 83 W. 159.49 ac.
Hugo Ploog	2879	NW¼ Section 9, T. 22 N., R. 18 E. 160. ac.
Laura Silk	1584	SE¼, S½S½NE¼, Section 18, T. 129 N., R. 79 W. 200. ac.
Robert Sherwood	4296	SE¼ Section 20, T. 20 N., R. 29 E. 160. ac.
Franklin Thomas	1196	SW¼ Section 33, T. 21 N., R. 24 E. 160. ac.
Albert Two Bears	2098	S½SW¼, S½N½SW¼, S½SW¼SE¼, NW¼SW¼SE¼, Section 27, T. 133 N., R. 150. ac.
Albert Two Bears	2114	SW¼NE¼, W½SE¼NE¼, Section 34, T. 133 N., R. 79 W. 60. ac.
Kenneth Ward	558	S½NW¼, lots 3 & 4 Section 2, T. 21 N., R. 27 E. 160.02 ac.
Kenneth Ward	3175	S½ Section 12, T. 21 N., R. 28 E. 320. ac.
Arthur Yellow	1811C	1/12 interest in SE¼ Section 19, T. 131 N., R. 80 W. 13.33 ac.
Samual Claymore	654	SE¼ Section 27, T. 21 N., R. 30 E. 160.00 ac.
Harry Fast Horse	2126	40320/18144 interest in E½NE¼SE¼, NE¼SE¼SE¼ Section 23 6.65 ac T. 133 N., R. 79
Pat Mclaughlin	194	NE¼ Section 34 T. 21 N., R 28 E. ([illegible]) 160. ac.

PETITION TO SENATORS DANIEL INOUYE AND KENT CONRAD

RE: GARRISON DIVERSION AND OAHE SETTLEMENT

1. The undersigned Standing Rock Reservation enrollees request compensation for the loss of their real government and resulting hardship when an amended constitution was forced on us February 11, 1959 as a part of the taking of our lands under the Act of September 2, 1958 (72 Stat. 1762) for the Oahe Dam and Reservoir. Only 409 persons voted affirmatively with many of us not allowed to vote. The reason for the acceptance was that they promised a per capita payment of $1,200. What happened was a program called family plan providing $650 per person most of which was paid directly to merchants. The 1959 constitution destroyed all practice of our ancient democracy. The present government has been referred to as a Boy Scout operation. The people have suffered beyond description because of the blatant paternalism of bureaucrats and puppet tribal council. Questions about the reasons for the incomplete government have been raised throughout the years. Shortly after 1959 a petition for modification was mailed to Aberdeen Area Director Robert Bennet who refused to take any action. The reason given for the dictator type of government supported by the United States was that the tribal council had the millions of dollars from the Oahe settlement to use for rehabilitation and developers and others would not want to do business on the reservation if they had to wait until the people were informed and time taken for them to examine and study the feasibility of proposals for the use of their money. COMPENSATION REQUESTED FOR LOSS OF OUR REAL GOVERNMENT AND RESULTING HARDHSIP, SUFFERING AND INJUSTICE IS $82 MILLION to be paid out on a formula agreed to by the signers of this petition. A major portion will be paid to those who reached majority in 1959 who have had little or no employment with the tribal council programs and/or with the federal government on Standing Rock Reservation. The remainder will be paid on the basis of those reaching 18 years or more in each year since 1959. The amount based on employent on the reservation with the tribal council/federal government and other benefits they received. Our plan is one of the ways to compensate the people for the loss of dignity, justice and respect suffered since 1959. It will also attempt to address that problem of the generations of "gravy train" riders and the gap between the "haves" and "have nots" on the reservation.

2. Compensation for the individuals who lost land and homes in the Oahe Taking Area in the amount of $90 million to replace the land and property lost. The people's lands (mistakenly called tribal) to be replaced and all income reinvested in other lands until such time as pro rata payments can be made to the elderly and incapacitated persons.

3. Cancel by congressional act (appeals to the BIA have been ignored) all land sales to BIA employees/relatives and Standing Rock Tribal councilmen-women and their relatives made under Section V of the Act of September 2, 1958 (72 Stat. 1762) except when replacing acreage lost to Oahe taking. The injustice of these sales to selected individuals has acted like a cancer eating away at the hearts and spirits of the down trodden people of Standing Rock Reservation. It will continue in their memories until action is taken to correct this gross mismanagement and fraud committed by the Bureau of Indian Affairs and the Tribal Council after the constitution approved by the United States April 24, 1959.

4. The human suffering on Standing Rock Reservation is indescribable because of the loss of responsible government. It will take at least one generation of experiencing accountability and responsibility in government for the people to benefit. There are no stable systems in place and since the United States had a major role in the destruction of our government, we request that Congress pass legislation to allow the people of Standing Rock Reservation to utilize the federal court system in their efforts to reinstitute a democratic, responsible and accountable government on our reservation.

The foregoing are our requests.

The following are comments on the "Final Report of the Garrison Unit Joint Tribal Advisory Committee":

B. Standing Rock Sioux Reservation.

1(2)Irrigation and on farm development are not of major concern to the people. Previous efforts in these areas have not had impact on the people.

3(4)Rather than recreation, we, the people request that all stable, barren shoreline areas be planted to trees. The tree shelters are needed for stock, deer, other animals, fruit trees and plants. (We do not have money for boats, hotel rooms and restaurants and do not understand the committee's recommendation.) Any excess lands should be returned for management in accordance with our recommendation un Item 2 preceding page.

4. Our water rights are the right to free water. The tribal council and its created boards and agencies should not charge us for water.

7. See our requested item #3 on preceding page.

8. Many of us are in an economic situtiion which makes it difficult to pay for electric power and fuel. Any congrssional act should address the right to free power and that no middlemen, tribal council included, should charge.

9. Any additional compensation has to reach the people directly on the basis of need and non-assimilationist status. The currect situation of the have and have nots should not be continued and expanded on Standing Rock Reservation by channeling money through bodies such as the Standing Rock Tribal Council. (Perhaps any additional compensation should be used to fund a pilot government project on Standing Rock Reservation.)

It has been repoeted to us that the tribal council's people are talking about a bridge to cross the Missouri River. That bridge may be a good idea but some of us are wondering if we are expected to eat that bridge or may be live under it which will be difficult during the cold winter.

We are not aware of the source of the committee recommendations.

Attached is a copy of of the traditional people's statement on January 9, 1986 made at their meeting in Fort Yates, North Dakota. We expected that the Committee would have further meetings with us about our expressed concerns.

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
November [illegible], 1987

Thank you Chairman Inouye and members of the Senate Select Committee for this opportunity to make a statement on the proposed legislation covering the Joint Tribal Advisory Committee's-recommendations and the possibility of just compensation for the people whose lands were taken for the Cahe Dam.

My name is Reginald Bird Horse. I live on the South Dakota side of the Standing Rock Reservation, in the rural Wakpala area.

There is most definitely a need for legislation to address the concerns of the people who suffered and continue to suffer as a result of the loss of the most fertile and beautiful lands of the Standing Rock Reservation when the Cahe Dam was built. Please take serious notice of the people's petition addressed to Senator Inouye and Senator Conrad. The petition has four parts which are as follows: 1. Payment to individuals who have suffered. 2. Compensation to the people who lost their hbmes and lands to the Dam. All lands not under water be returned to them and the other lands be managed by a Commission. The income from tribal lands to be used for the elderly and incapacitated Native people of Standing Rock Reservation. 3. A correction of the Section V land sale scam. 4. The people want responsible and accountable officials. Congress has the final word on us. The people want help to improve. Hiding behind sovereignty has to end. The booklet entitled, "The Taken Land" was prepared to show you what happened to people like my father and myself when we were forced to leave our lands. Legislation to correct the injustice is necessary.

We traditionalists strive for unity among our people living on what was the Great Sioux Reservation, although it was divided in 1889. We need the help of governmental agencies and the Congress to re-establish unity. The Cheyenne River, Crow Creek, Lower Brule and Yankton Reservations all border on the Cahe, Fort Randall, Big Bend and Gavins Point Dams. The Oglala and Rosebud Reservation people also have treaty rights to the Missouri River.- Any proposed cash payments from the sale of power generated at the dams cited on page 11 of the proposed legislation has to address the rights of all the people of the Great Sioux Reservation. We cannot continue to act in a divisive manner. Furthermore, there are serious concerns about irrigation and recreation.

In order to insure fair and equal treatment of the Native people of Standing Rock Reservation, all benefits arising out of just compensation from Oahe Reservoir, i.e. use of funds, management, evaluation, adjudication and administration, be done through a committee composed of members representing the Standing Rock Landowners' Association, the people who lost land in the Oahe Taking and members of the Standing Rock Tribal Council. This committee will be fully responsible and accountable. They should be subject to whatever laws to insure honesty and integrity.

PREPARED STATEMENT OF MORGAN DUBROW

Mr. Chairman, I am Morgan Dubrow, Chief Engineer of the National Rural Electric Cooperative Association (NRECA), the national association of over 1000 rural cooperatives which supply central station electricity to more than 25 million people in 46 states.

I appreciate the opportunity to submit a statement to the Committee on the bills "to finance compensation to the three affiliated tribes and the Standing Rock Sioux Tribe" for lands taken from the Pick Sloan-Missouri River Basin Program, to implement certain recommendations on the Department of the Interior's Garrison Unit - Joint Tribal Advisory Committee Final Report.

Garrison and Oahe Dams are two of the six major structures built to provide flood control and navigation on the Missouri and Mississippi Rivers all the way to New Orleans. The states in the Upper Missouri Basin agreed to permanently flood over 1.6 million acres of productive land in order to eliminate major downstream flooding, in return for the promise of future major water development to replace loss of economic opportunity. That plan, called the Pick-Sloan Missouri River Basin Program was authorized by Congress in the 1944 Flood Control Act. Over $2.3 billion in downstream damages and immeasurable human tragedy have been averted by the construction of the six mainstream dams, including Garrison Dam in North Dakota and the Oahe Dam in South Dakota.

However, the major water development projects promised to the Dakotas have never been delivered. As the Committee knows, the Oahe irrigation unit in South Dakota has all but been abandoned and the Garrison unit in North Dakota has been authorized as a very small irrigation development. Despite this, it should be clear to all that the flood control projects on the Upper Missouri River are national in scope and provide benefits to states from the Canadian border to the Gulf of Mexico.

NRECA is not opposed to the Congress providing for just compensation for Indian claims. However, we oppose the provisions of these bills affecting MRB electric power revenues because of their adverse impacts on our member systems throughout the Basin. We believe such compensation should be provided from appropriated funds.

In the Missouri Basin, power rates are established so as to fully recover the Government's investment in these projects and, at the same time, provide for amortization, operation and maintenance over the life of the project. The present average 7.4 mil rate for the Basin fully covers all costs and meets the repayment schedule. In fact, federal electric program customers are covering more than 80 percent of the total cost for the entire MRB Project. We understand that MRB power rates could increase by about 40 percent if the draft language before this Committee is enacted.

In light of this, we reiterate our strong opposition to the use of power revenues to provide funds for this proposed compensation which would adversely impact our members that purchase power from the Pick-Sloan MRB Project.

Thank you for the opportunity to present our association's view regarding compensation to the Indian tribes.

10 AUG 1987

Honorable Daniel K. Inouye
Chairman, Select Committee on Indian
Affairs
United States Senate
Washington, D.C. 20510-1101

Dear Mr. Chairman:

This letter provides a status report on our actions in response to initiatives of the Standing Rock Sioux Indian Tribe and the Three Affiliated Tribes in the May 1986 Joint Tribal Advisory Committee (JTAC) Report and issues raised during subsequent meetings with the Tribes and the Corps of Engineers.

In addition to a meeting with Senator Burdick on June 10, 1987, separate meetings were held between representatives of the Corps and the Three Affiliated Tribes and Standing Rock Sioux Tribe. On July 7 and July 9, my representatives, Colonel Steven West, Omaha District Engineer, Lieutenant Colonel Charles Cowan, Assistant Director of Civil Works, and other Corps personnel visited the Standing Rock Sioux and Fort Berthold Reservations. I am enclosing a synopsis of issues indentified at those meetings and Omaha District's plan for resolving them.

I believe the Corps has made considerable progress in resolving the issues raised. However, I have asked them to provide me with another status report by October 30, 1987. We will work toward Administration goals for the Indian peoples. In doing so, however, I must also recognize the various legislative authorities affecting the Civil Works programs and the current budgetary realities. Progress is being made, and I am willing to work with you to resolve these issues.

I have sent similar letters to the Chairmen of the Tribal Councils of Three Affiliated and Standing Rock Souix Indian Tribes.

Sincerely,

/S/
John S. Doyle, Jr.
Acting Assistant Secretary of the Army
(Civil Works)

Enclosure

Note: Similar letters were sent to Senators McClure, Johnston, Evans, Conrad, Pressler, and Daschle and Congressmen Young, Dorgan, Johnson and Udall.

29 July 1987

Corps of Engineers Report on Joint Tribal Advisory Committee (JTAC) Issues

The following five items are recommendations in the JTAC report related directly to Civil Works program activities:

a. Return of excess lands.

In 1985, Omaha District completed Executive Order 12512 surveys and determined that there were no excess lands at either Lake Sakakawea or Lake Oahe. These determinations were made on the basis that project lands were necessary for authorized project purposes which include recreation and fish and wildlife.

Legislative authority exists to administratively transfer lands within Indian Reservations through General Services Administration to The Department of the Interior to be held in trust for the tribes provided those lands are excess to project purposes. The proposal to return lands within the Reservations, subject to sloughing and flowage easements, has been reviewed. There are isolated parcels and blocked out lands that can be determined excess to project needs. We will review the project lands within the reservations, applying current acquisition criteria, to identify those lands excess to the project purposes. This review will take approximately eighteen months.

b. Development of the shoreline recreation potential of Lake Sakakawea and Lake Oahe.

Omaha District will work with the Tribal Councils to outline a long-term plan which will supplement the master plan. This plan will identify potential recreation areas to improve lake access, satisfy the recreational needs of the area, and contribute to tribal economic development objectives. Such areas could be leased to the tribes and made available for either tribal or private sector development.

c. Replacement of infrastructures lost by creation of Lake Sakakawea.

The Three Affiliated Tribes indicated a need for construction of a bridge to permit reestablishment of a crossing on State Highway 8 Elbowoods, North Dakota. State Highway 8 was important to the residents of the reservation before the creation of Lake Sakakawea. Although additional roads were constructed on the reservation, Lake Sakakawea has divided the Reservation and limited accessibility to tribal facilities.

The Corps of Engineers is without authority either to study the feasibility of a bridge or to construct a bridge at the former State Highway 8 crossing. Construction of the bridge is more appropriately a state responsibility. However, the Corps would provide available data to the North Dakota State Highway Department for use in designing the bridge.

Other items addressed in the Report regarding infrastructure replacement are not within the purview of Corps of Engineers programs. These items should be addressed by the appropriate Federal agencies.

d. Additional financial compensation.

From the mid 1940's through the 1950's, the issue of adequate compensation was debated before the Congress. Legislation authorizing compensation to the tribes recognized both the tangible and intangible impacts associated with these projects were based on public values of that era. The JTAC report's discussion on compensation is limited. The Corps is, therefore, unable to address compensation issues at this time without more information.

e. Other items which the Committee deemed important.

The Standing Rock Sioux Indian Tribe recommended the establishment of an Indian Desk within the Corps of Engineers Headquarters. Based on a review of the issues raised by the Tribe, communications between the Corps and Indian tribes should be improved. Omaha District has established procedures and has identified a single point of contact to assure that issues affecting the Indian people along the Missouri River are surfaced and referred for consideration by the appropriate levels of authority in the Department of the Army. Improved communications between the tribes and the Corps of Engineers through the Omaha District is essential.

Both tribes have raised an issue concerning hunting and fishing rights and enforcement. As a matter of general policy, state game and fish agencies are responsible for administering state laws at Corps projects. Legislative action may be required at the Federal and/or state level to address the various complex issues and competing interests. This entire subject will require considerable study by all parties.

STANDING ROCK SIOUX RESERVATION

EROSION IN FORT YATES AREA

The Tribe expressed a concern that the Corps was not taking necessary action to protect Fort Yates from erosion. In particular, they mentioned erosion at the areas near the Sitting Bull Monument site, the boat ramp that is close to their water supply system, the causeway from the island, and the north end of the island. In addition, they are concerned about erosion in caves under the island upon which Fort Yates sits. Omaha District has initiated measures to protect the boat ramp and water supply and the Sitting Bull burial site this year. Problems at other erosion areas will be evaluated.

TREE REMOVAL FROM SHORELINE

The Tribe expressed concern about the large number of trees left in the flooded area along the shoreline of Lake Oahe near the Reservation. Representatives of the Omaha District will meet with the Tribe to identify specific areas and develop a plan for limited clearing.

REFORESTATION AND REESTABLISHMENT OF WILDLIFE HABITAT

The inundation caused by Lake Oahe resulted in the loss of many uses of bottomland forest and associated shrub and plant ecosystems and altered the wildlife habitat. The Tribe is concerned over these losses. The Omaha District will coordinate with the Tribe to consider a stewardship plan including reforestation and establishment of wildlife habitat. Omaha District will initiate efforts to contract with the Tribe or Indian-owned firms to implement this plan. This would have the additional benefit of providing employment on the Reservation.

"JED'S LANDING" CONCESSION OPERATION, SOUTH DAKOTA

In May of 1982, the Corps entered into a public park and recreation lease with Corson County, South Dakota. The lease is located on land acquired from the Tribe for Lake Oahe. Subsequent to the 1982 lease, Corson County entered into a concession agreement with a non-Indian. This individual has been allowed by the Corps to sell 3.2 beer in connection with his concession operation. The Tribe expressed concern about the Corps leasing to non-Indians on land acquired from Indians and allowing the sale of "liquor on their Reservation." Omaha District will coordinate with the Tribe prior to leases of this nature and prior to the approval of the sale of alcoholic beverages.

EXPOSED MUD FLATS ALONG THE SHORELINE

Tribal representatives expressed concern about extensive mud flats that are caused by the rise and fall of the Oahe Reservoir. These mud flats inhibit direct access to the shoreline. When they dry out, blowing dirt and sand sometimes becomes a problem. The mud flats can be dangerous for livestock which can become mired in the mud. The second largest of the six reservoirs in the Missouri River main stem system, the Oahe project, contains one of the largest storage pools for the spring and early summer flood runoff. It is impossible to eliminate these mud flats and still operate the Missouri River main stem system for flood control purposes.

FLOODING AT WAKPALA, SOUTH DAKOTA

The Tribe expressed concern that the Town of Wakpala is being flooded when Lake Oahe pool elevations are between normal and maximum operating pool. In 1959 and 1974, the Corps conducted studies of flood problems at Wakpala. Both studies concluded that there is no economically feasible solution to this problem. The Tribe attributes this flooding to the Oahe Project. Omaha District will review the previous studies to determine if these flood problems are project-related. Future action would be based on the results of the review.

HISTORIC AND PREHISTORIC HUMAN SKELETAL REMAINS

Since the closure of Oahe dam, previously unknown and unidentified skeletal remains have been eroding out of the reservoir cutbanks. Representatives of the Standing Rock Sioux Tribe expressed concern about the reburial of these remains and about the removal of Indian artifacts from graves. The Tribe is concerned with reinterment of these and other remains and exposure of additional graves. Omaha District will consult with the respective Indian tribes and State Historic Preservation Officers when developing and implementing cultural resource plans. Descendants or cultural groups will be consulted to determine appropriate disposition of the remains and artifacts. The Corps is in the process of developing more definitive policy on the disposition of human remains.

OWNERSHIP OF THE RIVERBED

The Standing Rock Sioux Tribe claims that it still owns the riverbed of the Missouri River. Subsection 1(a) of Public Law 85-915 specifically provides for the acquisition of the "... title to any interest Indians may have in the bed of the Missouri River so far as it is within the boundaries of the Standing Rock Reservation ...." Other sections provided for compensating the Tribe for the taking of the bed of the Missouri River as well as other Tribal interests. The law is clear that the United States acquired ownership of all of the interests of the Standing Rock Tribe in the bed of the Missouri River and the Tribe was compensated for that taking.

WAIVER OF SOVEREIGN IMMUNITY

Omaha District has been requiring Indian tribes to specifically waive their sovereign immunity when contracting with the Corps of Engineers to allow the enforcement of those contracts by the Corps. These waivers are limited, pertaining only to the specific contract in which they are contained. All other parties with whom the Corps contracts (including State and local agencies) are subject to suit and, in appropriate cases, also required to waive sovereign immunity. The Standing Rock Sioux Tribe feels that Indian Tribes should be treated differently from other government agencies and private parties when contracting with the Corps because of their special relationship with the Federal Government. Recently, however, the Tribe has waived its immunity in several contracts with the Corps. While we will try to recognize the tribes' desires whenever possible, there are, in many instances, statutory requirements for a binding agreement enforcable in court which would require the tribes to waive their sovereign immunity (see Sec. 221 of PL 91-611 as amended by Sec. 912 of PL 99-662).

DEPARTMENT OF DEFENSE
UNITED STATES OF AMERICA

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, DC 20310

12 NOV 1987

Honorable Daniel K. Inouye
Chairman, Select Committee on Indian
  Affairs
United States Senate
Washington, D.C. 20510-1101

Dear Mr. Chairman:

On August 10, 1987, I provided you with a status report on our actions in response to initiatives of the Standing Rock Sioux Indian Tribe and the Three Affiliated Tribes in the May 1986 Joint Tribal Advisory Committee Report and issues raised during subsequent meetings with the Tribes and the Army Corps of Engineers. In the same letter, I indicated that I had asked the Corps for another status report by the end of October.

The enclosed status report shows that progress is being made. I will keep you informed of the continued progress as major milestones are met.

I have sent similar letters to the Chairmen of the Tribal Councils of Three Affiliated and Standing Rock Sioux Indian Tribes.

Sincerely,

/S/
John S. Doyle, Jr.
Acting Assistant Secretary of the Army
(Civil Works)

Enclosure

24 October 1987

CORPS OF ENGINEERS STATUS REPORT ON JOINT TRIBAL ADVISORY COMMITTEE (JTAC) ISSUES

1. Excess Lands. Omaha District developed schedules and initiated efforts to conduct detailed reviews of the Corps managed lands at Lakes Oahe and Sakakawea that fall within the exterior boundaries of the Standing Rock Sioux and Three Affiliated Indian Reservations, respectively. Mapping for both projects started in September 1987. Land reviews for each lake are occurring simultaneously. Reports of excess are scheduled to be forwarded to HQUSACE on 1 September 1988. This is five months earlier than originally estimated. Preliminary information on each lake follows:

a. Lake Oahe, Standing Rock Reservation, North Dakota and South Dakota.

Acres acquired from the Indians	55,944
Approximate miles of shoreline	265

Types of existing outgrants:

Easements	36	
Licenses	7	
Permits	4	
Leases	4	
Total	51	(ND-26)(SD-25)

b. Lake Sakakawea, Fort Berthold Reservation (Three Affiliated Tribes), North Dakota.

Acres acquired from the Indians	152,779
Approximate miles of shoreline	500

Types of existing outgrants:

Easements	49
Licenses	2
Permits	6
Leases	13
Total	70

2. Development of Shoreline Potential. The Omaha District has prepared a schedule for developing a long-term plan for recreation development for the Tribes. The plan will identify potential recreation areas and facilities that will help the Tribes meet their objectives.

a. Standing Rock Reservation. District personnel and Tribal staff have visited potential sites for development. The Tribe has provided a list of sites and appropriate facilities. Coordination is continuing. The major milestones are:

Site visits with the Tribe	30 Oct 87
Concept Development Plans	30 Mar 88
Draft Outline Report	30 Jun 88
Final Report to Missouri River Division	15 Sep 88

b. Fort Berthold Reservation. The Tribal Council is in the process of filling a Fish and Wildlife staff position who will likely serve as their single point of contact responsible for coordinating and defining the Tribes' objectives and goals for recreation development. Past requests for leases on specific sites ~~have been staffed and approved.~~ The major milestones for developing a long-term plan are:

Site visits with the Tribes	20 Nov 87
Concept Development Plans	29 Apr 88
Draft Outline Report	30 Jun 88
Final Report to Missouri River Division	30 Sep 88

3. Fort Berthold Infrastructure Replacement. The Omaha District's involvement has been limited to a response for a Section 10 permit request from the bridge sponsor.

4. Establishment of an Indian Desk. An Indian desk has been established in the Omaha District. Mr. Howard C. Rudloff, Executive Assistant to the District Engineer, has assumed the responsibility of managing the Indian Desk and is the point of contact for all Indian matters. The lake managers at the six main stem projects and the real estate field offices are responsible for the day-to-day interactions. They will establish rapport with the Tribes in their areas of responsibility and maintain effective communications. They will visit the Tribes on a regular basis.

5. Four Bears Exchange - Fort Berthold Reservation. Section 1125(c) of the Water Resources Development Act of 1986 (PL 99-662) and its legislative history, requires the receipt of 82 parcels of Tribal land comprising approximately 433 acres as consideration for the transfer of the Four Bears Complex area to the Secretary of Interior to be held in trust for the Three Affiliated Tribes. A Tribal representative recently indicated the Tribal Council will not send the Omaha District a letter outlining their position on the exchange. In April 1987, the District wrote to the Area Director of the Bureau of Indian Affairs Area Office in Aberdeen, South Dakota, requesting their assistance in effectuating the exchange. Having not received a reply, the District is again writing to the Area Director in an attempt to implement the provisions of Section 1125(c).

6. Reforestation and Reestablishment of Habitat. The Omaha District has initiated development of long-term plans for vegetation improvement on project land within the former Standing Rock and Fort Berthold Reservations. They will be part of the Operational Management Plans of each project. The initial data collection is essentially complete. The schedule for development and execution of the plans along with the cost of implementation is as follows:

a. Lake Oahe.

Final plan to Missouri River Division 2 May 88

b. Lake Sakakawea.

Final plan to Missouri River Division 15 Apr 88

7. Reburial of Human Skeletal Remains. The Omaha district will prepare a reburial policy and agreement in cooperation with the Tribes. It is scheduled for completion in May 1988.

~~a. The District staff met~~ with representatives from both reservations and other appropriate parties, in Bismarck, North Dakota on 9 September 1987, to discuss reburial policy in general, and the skeletal remains of approximately 46 individuals held by the State of North Dakota. Agreement was reached to return the remains to the Three Affiliated Tribes for reburial before analysis was completed. On 25 September 1987, the remains were returned to the Tribes.

b. A skeleton and coffin recently exposed and recovered at the former site of Mad Bear Cemetery on Lake Oahe, are being temporarily stored at a local funeral home, awaiting a decision by the Standing Rock Sioux Tribal Council on reburial arrangements. Two families are in dispute over identity of the remains. The Omaha District has offered analysis to determine age, sex, stature, etc. as a means of identification and resolution of the dispute. To date, the Tribal council has made no decision on analysis or reburial.

c. The Omaha District's South Dakota archeologist will investigate, at the request of the State Archeologist, reported exposure of skeletal remains near Kenel, South Dakota.

8. Erosion at Fort Yates. Shoreline erosion damages were identified during on-site inspection by Oahe project personnel and representatives of Standing Rock Sioux Tribe on 31 August 1987. The shoreline erosion problems can be divided into the following five areas:

a. Corps boat ramp near Fort Yates, ND. The boat ramp and parking area have experienced erosion problems over a long period. A study completed in November 1985 recommended protection of the area by using stockpiled rock and pump crete. A purchase order contract was awarded on 10 September 1987 to repair the area by 30 September 1987.

b. Sediment ponds for Fort Yates water treatment plant. Approximately 700 lineal feet of erosion is occurring at the northwest corner of the north pond. The erosion has progressed within fifteen feet of the sediment ponds. The pond is in immediate danger of failing. Omaha District is expediting the plans and specifications to repair this area.

c. Water treatment plant. Approximately 450 lineal feet of shoreline erosion is occurring along the west side of the water treatment plant. We are investigating actions which may be taken to resolve this problem.

d. Water intake structure. Approximately 470 lineal feet of shoreline erosion is occurring along the west side of the water intake structure. The steel sheet piling foundation is being eroded by wave action. We are investigating actions which may be taken to resolve this problem.

e. Sitting Bull burial site. At a site inspection on 13 August 1987, the Corps and the Tribe agreed that storm drainage runoff from Fort Yates city streets was the cause of this erosion. The city will correct this problem. No further studies will be conducted by the Corps.

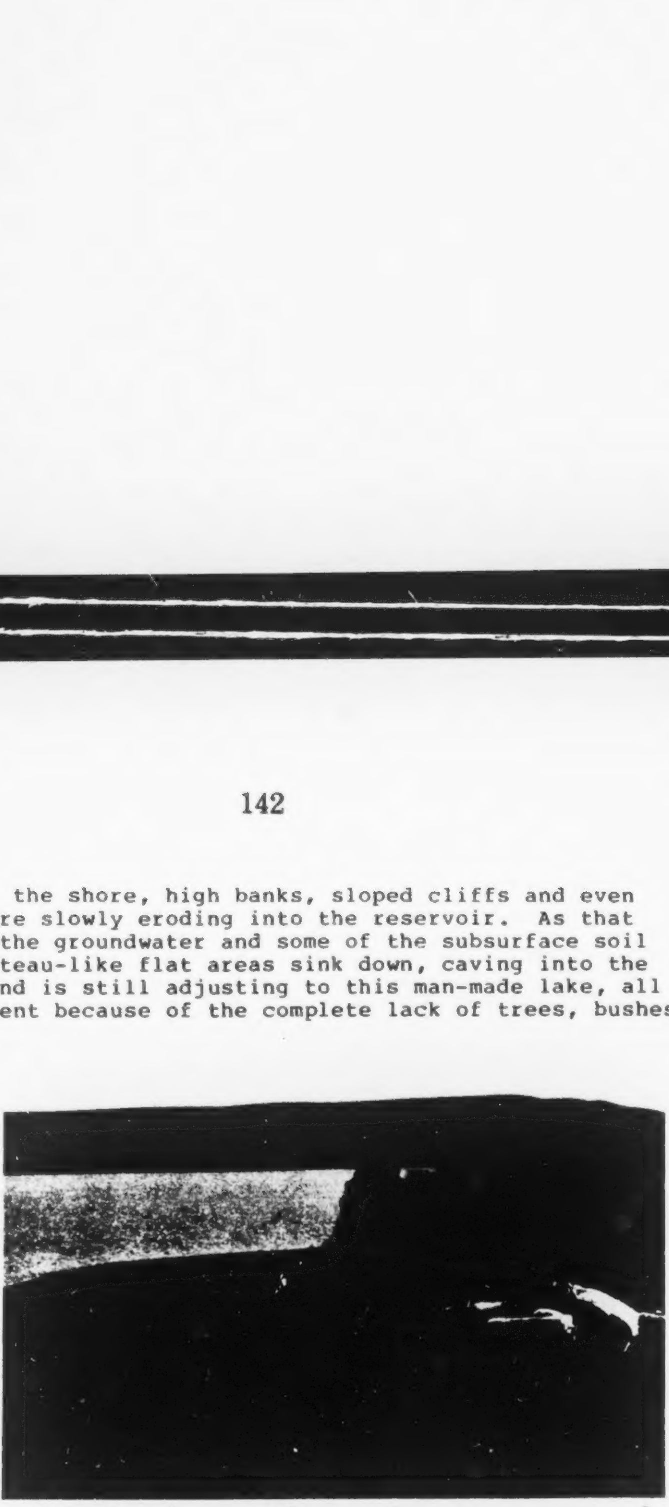
A study has been initiated to address the general problem of erosion in the Fort Yates area. It will define the problem, evaluate solutions, analyze economic feasibility, and prepare a final report on the study results by 1 April 1988.

9. Removal of Timber, Lake Oahe. The Omaha District and the Standing Rock Sioux Tribe are developing a jointly prepared plan that identifies specific areas of concern, outlines a program of limited clearing and develops a cost estimate for implementation. Coordination with the Tribe has been initiated and available data is under review. The report is scheduled to be transmitted to the Missouri River Division on 1 June 1988. At a 31 August 1987 meeting with the Tribe, arrangements were made for the removal of fallen timber along the shoreline for firewood and the possible removal of some standing timber for firewood was discussed.

10. Jed's Landing. Tribal comments will be solicited upon receipt of all future requests for lease of former reservation land for recreational purposes. Their comments will also be requested on any requests to sell alcoholic beverages in connection with such leases.

11. Wakpala Flooding. On 8 September 1987, the Standing Rock Sioux Tribe met with Omaha District. Information concerning past flooding at Wakpala was exchanged. The District is reviewing three previous study reports, information related to lake level impacts and existing Corps authorities. An economic analysis will be part of their review process. A site visit is scheduled for November 1987 and the review is scheduled for completion by 15 December 1987.

All along the shore, high banks, sloped cliffs and even entire hills are slowly eroding into the reservoir. As that process sucks the groundwater and some of the subsurface soil away, tiny plateau-like flat areas sink down, caving into the earth. The land is still adjusting to this man-made lake, all the more apparent because of the complete lack of trees, bushes or any other vegetation which used to grow in the region.



"Yes, many chokecherries grew here. Even more up around Wakpala. All gone. That is a traditional food of our people... And fruit trees, buffalo berry, all kinds of growing plants we could eat."

Vernon looks out quietly over the expansive waters, seeing a history that could be tasted and touched as well as named. He begins to walk out on the raised earthen causeway extending out and across the broad lake valley.

"This here was built by the railroad, little while before the water rose. About ten years later, maybe `69, they tore up the rails... Used to be we could cross to the other side over that bridge ahead, get to our land... Few years ago, they stuck that building there. Now, we cannot."

Ahead, most of the way down the earthen dike, is a large metal building spanning the route over the old railroad bridge above the main channel of the old Grand River. Vernon walks up close to the chain link fence surrounding the works.

"Irrigation pumphouse. Water runs in a pipe laid down inside the bank, here. Goes over that hill back on shore, around that bay area, and over those hills, there where those hunters are... Runs maybe seven miles out there to some Council land."

On the long, rutted dirt roads in, there are no model farms or irrigated land. The circuitous route for the pipeline seems a farfetched idea in a land of harsh realities and practical people. Vernon points out an old wagon trail cut into the hills.

Land is the history for Indians, and tradition is passed on through storytelling connected to environmental features.

United States Department of the Interior
BUREAU OF RECLAMATION
WASHINGTON, D.C. 20240

IN REPLY REFER TO: 108

OCT 9 1987

Mr. Charles W. Murphy
Chairman, Standing Rock
Sioux Tribe
Fort Yates, North Dakota 58538

Dear Mr. Murphy:

On September 23, Mr. Haydn Lee of my staff met with Senator Burdick and representatives of the Standing Rock Sioux Tribe to discuss the study process for the development of irrigation and municipal, rural and industrial service as authorized by provisions of the Garrison Diversion Unit Reformulation Act. This process has been the subject of a series of meetings between Regional Director Billy Martin's staff and representatives of your tribe. Our understanding is that the tribe wants any Garrison Diversion Unit study funds authorized by Public Law 99-294 for irrigation and municipal, rural and industrial supplies on the reservation to be transferred to the tribe so that it can contract for those studies to be carried out under the Indian Self-Determination and Education Assistance Act of 1975 (Public Law 93-638).

The Secretary of the Interior, in his March 16 letter to Senator Burdick, stated that the Bureau of Reclamation believes that a comprehensive plan for all reservations affected by the Garrison project requires the plan to be developed by one agency. Therefore, he asked Reclamation to formulate a comprehensive plan, in cooperation with all the tribes, under its Public Law 99-294 authority, and directed Reclamation, in cases where it would be more effective and efficient, to utilize contracts with private firms rather than to use Reclamation staff. Further, he stated that Reclamation and the Bureau of Indian Affairs (BIA) are to fully coordinate with the affected tribes in order to achieve the results envisioned with the Garrison Reformulation Act legislation.

As we stated in the July 27 memorandum attached to Secretary Hodel's letter of August 20 to you, we support the use of contracting design and construction activities as well as any specific planning activity that can be more efficiently done through the provisions of the Indian Self-Determination and Education Assistance Act. Our support is conditioned on a case-by-case basis, with adequate plan formulation, environmental assessment, and technical oversight of the contracted work provided by Reclamation in coordination with BIA.

Reclamation does have the responsibility for the adequacy of the studies and to see that funds are utilized as directed by the Congress. The end product must be acceptable to the tribe and be able to provide long-term benefits.

I understand that Regional Director Martin has provided Reclamation Instructions pertaining to studies that will be needed on the reservation and citations of the laws leading to the requirement for a finding of irrigability. I have requested that he continue working with you to ensure that the tribal needs are met as authorized in the Garrison Diversion Unit Reformulation Act in conjunction with the congressional directives to Reclamation.

Sincerely yours,

(Sgd.) C. Dale Duvall

C. Dale Duvall
Commissioner

cc:
Honorable Quentin N. Burdick
United States Senate
Washington, D.C. 20510

bc:
Regional Director, Billings, Montana
W.O. Code 300, 400, 600, 700

WBR:HCLee:eb:9-29-87:x3132
cpt eb2/murphy-1

Theo Iron Cloud reflects on those difficult days, "This was my father`s land, before Oahe. All the people here fought the relocation, most are traditionals. The Bone Clubs, Maud Gunner, the others, all moved to other inherited lands like ourselves. No one got new land in this area."

The struggle for the dam was often acrimonious, with government men losing tempers. Harry Bone Club really fought the taking of lands. In a Council meeting one time everyone was really angry, and one B.I.A. rep said "Now Mister Bonehead, we will..." when Harry interrupted loud, slow and clear "It is Bone Club, sir."

"I do not speak English well, so if I talk Lakota language have someone next to you tell my words," Vernon says at a pow-wow at Bullhead honoring Veteran`s Day, where he has been asked to speak for U.S. Indian veterans from the area. "Our people have always served America. Fought in all the wars. Died to defend this great country. Every village, each home, has a veteran. All have gold-star mothers... They have sacrificed for the people... Now it is time to honor our veterans..."

The sun is setting on another day having passed by the Standing Rock Reservation. The rays grow long, obliquely bouncing off the hard rock, dry earth and bright waters covering Mother Earth. But the beautiful colors of a lovely, late Fall day are denied the people living along the ridges of the Grand River valley. The forests are gone. The tall, stately oaks, elms and maples, all gone. The flowing, clean Snake and Willow creeks where wildlife and Iron Cloud cattle came to drink are nothing more than wet ravines. All is underwater, or dead like the few tree trunks left along the shore, broken and lifeless. The waters rose, and rose, until they covered over what was once the "Taken Land."

"THE TAKEN LAND"

stories from : Harry Swift Horse

Reginald Bird Horse

Vernon Iron Cloud

These profiles are representative of the many Dakota-Lakota (Sioux) people who lost their land on Standing Rock Reservation in North and South Dakota during the construction of the Oahe Dam and Reservoir, of the Pick-Sloan Missouri River Program.

Fading in the minds of the government and in the memories of the younger people, the loss of the ancestral lands still plagues the now elderly individuals and their offspring who have suffered from the dislocation, often without just compensation.

The same story can be told on the Cheyenne River Reservation to the south, and Fort Berthold Reservation to the north on Lake Sakakawea, concerning the three affiliated tribes. It is hoped that these stories will concern all who read them.

"THE TAKEN LAND"

submitted by:

STANDING ROCK LANDOWNER`S ASSOCIATION
Directors: Joseph A. Walker
Agatha Fool Bear
Mary Louise Defender Wilson

stories collected by:
Mary Louise Defender Wilson
James V. Fenelon

photography and text by:
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Bismarck, N.D. 58502

We wish to extend our gratitude to the Senate Select Committee on Indian Affairs for lending a sympathetic ear and their support.
Particularly we thank : Senator Inouye (Hawaii), Chairman, Senators Conrad (North Dakota) and Daschle (South Dakota).

SWIFT HORSE

Harry Swift Horse is 87 years young. He has lived most of his life right next to the Missouri, a few miles south of Cannonball, on the Standing Rock Indian Reservation. He is from the Northern Dakota people, of the Sioux Nation.

"Living out here ain`t like the town. There your wife can work as a dishwasher. Man can find odd jobs, earn maybe $2.89 an hour. More these days... My place,, got to break horses for a living. Get firewood, run cattle. Never enough."

"The land is creeping toward the River, maybe four or five inches a year."

Harry crouches over a little, peers at the sandy, damp bank earth and draws a diagram with the tip of his old black boot.

"Buffalo used to cross here. Water weaved around like this, shifting some each year. Railroad come in, all the trees gone along the banks here, say they have to build earth dikes. Then the river ran straight... See that gully, against the natural lay of the hills? That`s a buffalo trail. They come down, cross at an angle. Take a whole day."

In the 1950`s the Oahe Negotiators faced a tough decision, whether to fight the B.I.A. and the Army Corps of Engineers and resist the construction of the Oahe Dam and Reservoir, or go along with the powerful government forces and hope to get as many concessions as they could. Some, like Harry, thought it was a bad idea to part with their coveted river bottoms land, at any price. And they said so, in the old way, each family head speaking out. But the promises flowed out of the mouths of the government representatives like milk and honey, and many were swayed.

"See that hollow out place there, along the bank? That`s where the buffalo would come out of the river and rub against the ground, break up the mud, bristles and straighten the hair in their hide. `nother one up near Mandan. Not many know that."

He is standing on top of a cracked and worn slab of concrete, part of the old foundation to his house. The depth in his eyes and a slight weariness of voice show the immensity of emotion welling up inside him, perched like an aging hawk atop his aerie, envisioning better days.

Swift Horse was brought on to the Tribal Council after he broke his arm in 1949. A few years later the Garrison Diversion controversy arose. The project would flood extensive portions of three large Indian reservations, dislocate many people living on their traditional sites, and destroy most of the wooded areas so rich in game, agriculture and needed timber.

"Had a broken arm. Couldn`t break horses... An elder said, "Young man, take it easy, put you on the Tribal Council. I didn`t know nothin`." He says, "For the people." Had just fourteen Council members then, and a Chairman-at-large. Many talks later, enough said we should go along with the government. They sent me to Billings, represent our people."

Of course, he had spoken against the flooding, so the council knew he would not be pushed around. But Harry Swift Horse had one trait the traditionals held in high esteem. He was totally honest(tiwaheyanka) a man of his word, and expected others to be so (igduhawacin).

"Seven years we talked, many delays. Lots of promises. Electricity, water, fuel. New land, irrigation..."

SENIOR
CITIZEN
NO LIQUOR

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STATE OF SOUTH DAKOTA

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GEORGE S. MICKELSON
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EXECUTIVE OFFICE
STATE CAPITOL BUILDING
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(605) 773-3212

November 3, 1987

The Honorable Daniel K. Inouye
United States Senator
SH-722 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Inouye:

Please accept this letter as my submission on the proposed Senate and House legislation concerning the Standing Rock Sioux Tribe and the Three Affiliated Tribes of North and South Dakota. Since the proposed legislation is based on a report from the Joint Tribal Advisory Committee, Garrison Diversion Project--a report which was prepared without my input--I wish to state my strong opposition to the following aspects of the proposed bills:

Senate Bill - The proposed bill currently being considered by the Senate Committee on Indian Affairs is ostensibly designed to rectify perceived wrongs inflicted by the United States upon the Standing Rock Sioux Tribe in taking the land of the tribe and its members for the Oahe Project. The findings clauses assert that the loss of the lands in question "plunged the Standing Rock Sioux Tribe into economic dependency." The proposed bill appears to posit a condition of prosperity for the tribe which allegedly existed before the Oahe Project commenced, and which can be restored through federal-tribal cooperation, without the necessity of considering the interests of the states of North and South Dakota. Such attitudes, however, misread history and are ultimately self-defeating.

While increased federal-tribal cooperation in advancing the interest of the tribe are all to the good, provisions such as Section 7 of the proposed bill, vesting beneficial ownership in the tribe of lands above 1,620 m.s.l. taken from the tribe and tribal members for the Oahe Project, and Section 3, providing exclusive tribal jurisdiction over hunting and fishing over all lands, including non-Indian lands, within the reservation, are not only ill-advised, but ignore constitutional principles of comity between the United States and individual states.

"The hunter set his tipi there, above the hollow. Buffalo come, he sits in the opening with his bow and shoots his meat, always a nice, fat she-cow. They kill maybe twenty buffalo. The rest keep passing by, don`t even look."

Two shots ring out, heralding the new deer season. The idea of killing huge buffalo with a single arrow from the tipi opening seems incredible, and the thought comes that they are stupid.

"Life is a circle, and the buffalo know they are feeding us. We are Pte people, we also are buffalo, but we came out from the earth different."

Feeling as much as seeing, Harry Swift Horse picks up signals from all around him, telling him what is happening in his world. Stepping over a partially buried trunk and pushing the thick, denuded branches away, he moves into a small clearing.

"This was our garden... And over there was the corral."

When directly questioned, Swift Horse doesn`t mince words about his loss.

"I had 180 acres, all prime bottom land, here below where Chief See The Bear set up his village. Now I live below that hill, above the coulee. I bought 20 acres... They paid six dollars an acre... Across the river, they got $180.00 an acre. That`s the white side."

He looks back again, seeing the buffalo trail, remembering the river rather than the lake.

"All land on the East side is Yanktonai. That is their country."

The course of history is clear in his statement, the connection unmistakable. The Yanktonai lost all their land on the other side, now the "white" side, and were never acknowledged nor given reparations.

"My wife had 160 acres, down near Wakpala. She got to buy 17 acres."

Inevitably non-Indians want to question that this many promises and treaties could be broken by the same government that formed a trust relationship with Native American peoples.

"B.I.A. always had it in for Standing Rock. Because of Sitting Bull. They pass us by. Nothing."

"They think... the fight over the Black Hills (Little Big Horn). We knocked their flag down. They blame Sitting Bull."

The United States, of course, is trustee for the Indian tribes and is responsible, with the people and government of the tribes, for providing for their welfare. Unfortunately, for a variety of cultural, historical, and policy reasons, the Standing Rock Sioux Tribe fell into a state of poverty long before the lands were taken for the Oahe project. The legislative history of the 1958 Act taking land from the tribe speaks of the desperate plight of these people. See, for example, H.Rpt. No. 1888, 85th Cong., 2d Sess., p. 6. ("The Standing Rock Indians are in the lowest income group in the Nation.")

Thus, the Bill enacted by Congress in 1958 was intended to remedy the situation in which the Standing Rock Indians found themselves before the takings. Some statistics help to illuminate the matter. As of 1958, there was apparently 3,600 Indians living on the reservation. H.Rpt. No. 1888, supra, p. 3. The legislation took 55,000 acres of Indian land. The legislation provided for three separate kinds of reimbursement. First, the landowners were allocated $1,952,040 for the land actually taken from them. See 72 Stat. 1762, Section 1(a)(1). This amount was apparently agreeable both to the tribe and to the government. See Memorandum of Understanding, dated March 24, 1958.

Second, the tribe was allocated $3,299,513 in "settlement of all claims, rights, and demands of the tribe and individual Indians..." associated with the taking. 72 Stat. 1762, Section 1(a)(2). Concretely, the House Report states that the "loss of subsistence and livelihood stems from the taking of the bottom lands and timbered area." H.Rpt. No. 1888, supra at 4. Thus, included within the sum, were reimbursement for the loss of timber, wildlife, and natural products; the potential increase in the value of irrigated land; and the expenses, losses, and damages to families forced to move. It also includes a sum for the bed of the Missouri River, although there was a dispute over whether the tribe had any legal claim to that. See, Id. at 5.

Finally, and critically, the 1958 Act allowed $6,960,000 "for the purpose of developing individual and family plans, relocating, re-establishing, and providing other assistance designed to help improve the economic and social conditions of all recognized members of the Standing Rock Sioux Tribe regardless of residents on the reservation..." 72 Stat. 1762, 1763, Section 5. (An additional $135,000 was allocated to

Until a few years ago, Harry lived in a wood house without water, heating, and only recently hooked up to electricity. He made his own addition. Yet he likes his home, and the old bridles, tack and saddle parts adorn the walls, inside and out. They are still in use, as Harry runs a few head of cattle and some horses to this day.

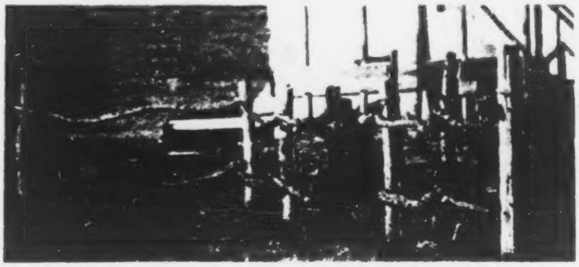
"Better catch that pony and rope those steer. Put a little grain out, he`ll come in... Now them Roosian cattle there, no good. Meat`s tough, necks all wrong. They can`t tell."

Harry flashes one of his rare smiles, genuine and lively.

"Maybe I helped to delay the works all those years."

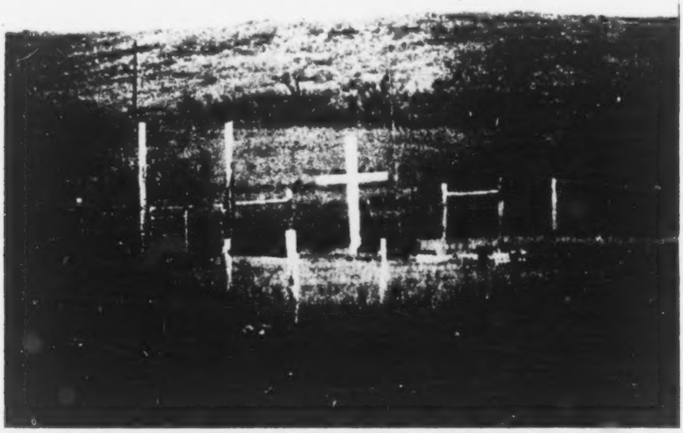
Walking along Swift Horse is reminded of the trip the council representatives took to Washington D.C., and how they had to visit and listen to officials from each department all week long. His most vivid memories are not of monuments, however.

"Wanted to cross this river, had to take this ferry, kind of long in the water. Some boss man let everyone on. They rushed down just like a herd of cattle... Ho, funny herd, all on one end... Boat tilts, like this... This boss starts yelling and cussin`, moving the herd on the other end... Like cattle."



Harry Swift Horse is pretty much done talking now, so he just walks to the fence, sits on the lower rail, and looks off in the distance, seeing some vision of the past and present without any straight line of time.

Farther down the dirt road is a well-kept grave marker, for his wife. They had six children, but only one son lived to raise his own family. Harry's grandchildren live in his first "650 house" across the way, after the son's death.

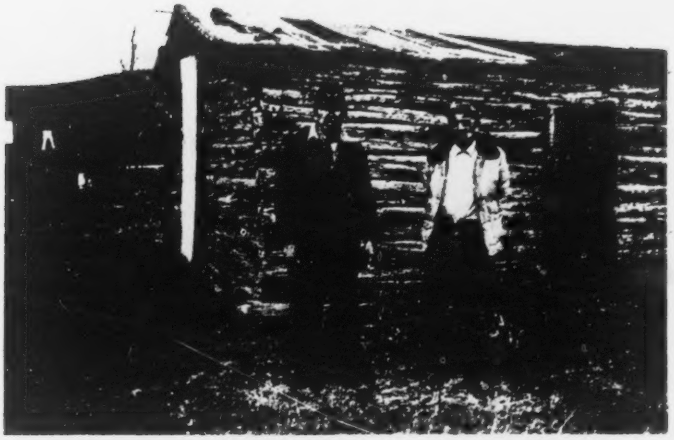


The years have only gotten harder for the full-bloods like Swift Horse, as the sign "Senior citizen, no liquor allow" testifies under the mailbox. Even the church, near the gravesite, has completely disappeared, now merely some overgrown bushes in what is otherwise the ubiquitous prairie browns of dry, trampled grasses, just a short distance from the few trees, mostly dead trunks and driftwood, marking the boundary of the "Taken Land."

HARRY SWIFT HORSE

passed away on
November 10, 1987

just four days
after granting
this interview.



BIRD

HORSE

"This is not my choice to live here."

Reginald Bird Horse stands tall, dark and forbidding outside the house he built his family when they were dislocated from the choice southern bank of the Grand River near Mobridge.

"The Army took my land away. Put me here. But I am not happy in this place. No water, no trees, no timber. Now the Army wants to take our sacred canyons away... You hear what they are doing to our land?"

"I built this house. I am a carpenter, an electrician, and whatever else I must be to live here. But no license. Always I must trade my work with someone else. The white man`s law."

His house is indeed built to last, not far from the main highway into Mobridge, on land exposed to the wind and snow without vegetation to break the cold. Bird Horse had to cut the rough, rutted dirt road into his home area.

"The roof I took from my first house, down on the river. The beams of the house also. But these boards lie across, not like the logs before, they were upright. No chinking, no holes, no heat loss... I had to build this way, or no helping money from the government."

Inside his family is watching a football game, the Redskins against the Raiders. The house is very clean, adorned with pictures of relatives and Lakota leaders of the past. He shows the bathroom with pride, the new fixtures with a power outlet he installed, with a friend. There are six large, plastic pails of water in the kitchen, for cooking, drinking, bathing and flushing.

"The B.I.A. put this cistern in, out back, and I hooked it up. But it costs fifty dollars for a thousand gallons to deliver, a hundred to fill it."

His point is clear. They can little afford to pay that much for water on the reservation, and refuse to move off the land. Even here he, like others, tries to live life according to the ways passed down from the elders. His sweat lodge stands lonely out beyond the carcasses of dead cars, in plain view of the road, outlined in the distance by Rattlesnake Butte.

"People can take a vision on that butte. The story is two heyokas (contraries) killed a sacred snake there, and the villages fled. The heyokas fought rattlers for many days, and finally lost... It is a dangerous place."

Reginald finally consents to go to the river bottoms and view the land taken away from his and his father`s families. He must be careful of governments, who could take more.

"Along the river here, this was all our land... If people can own land..."

No words need accompany the powerfully moving vista which greets Reginald standing on the southern ridge of the Grand River valley at the extent of the reservoir high water mark. In the background tall, gray, dead trunks of once mighty trees starkly outline the shallow water just covering the ground. Farther away to the east, the upper stubs of trees signal greater depth, and the unseen forest beyond, entirely submerged. Even more startling is straight ahead and to the west, where a vast sea of caked and dried mud-earth extends out from the expired trunks on the shoreline. Here and there a lonely, often tiny oak tree has left its body as a symbol of survival from the ravages of the reservoir and firewood hunters.

The steep road leads down to wide shelves. Stopping at one, Reginald steps into a square area of decomposed rubble.

"This was my home, the one where the roof came from."

He grasps the crumbling residue of concrete and dirt, letting it run from his fingers.

The area is remarkably flat, and seems unaffected in the manner of the desolate dried-mud sea beyond. Reginald steps down the slight incline and walks to some not-quite rotten posts protruding out of the ground.

"The corral. See these other posts? We sunk these to support the old posts, even then some fifty years old."

Sure enough, the stubs are spaced out just right for a fairly big corral and barn. It`s about this time that questions appear concerning the "taken land" and the water level. Even the dried-mud area is off and down at least six or eight feet, and the actual water level is lower than that. This area was never flooded, nor could anyone have ever thought it would be.

"Yeah, they took this land and said we couldn`t live here. Had to move. Beyond the ridge there. The Army took all that land, even up and over those high hills. They put up stakes, and told us all this was no longer our place to live."

The road cut at an angle through the ridge-hills rises sharply, as if a passageway to some other way of life, less just, less meaningful as an environment. Bird Horse points west down the river valley.

"Took all that land, even where those living trees are now. Pulled a church out too. Just took it apart. Never seen it again..."

Reginald walks out on the mud-earth area, and grabs hold of, caresses really, a dead Oak trunk sticking up as if a symbol of the past, one that Sitting Bull often made allegories about in his speeches of resistance.

"This old friend, good for building, and carving. Makes a good house, like my father`s out there, near that big trunk alone near the shore. All logs. We moved it, one piece by one."

As before, Bird Horse can see his father`s log house as he remembers it in his youth, situated amid thick trees populating the bend in the river, a short distance from his corral full of horses and the cattle range-feeding on the higher hills. As he walks reflectively along, he stops and picks up a rusty roll of barb-wire winding back to yet another dead Oak tree. He places the coil on the tree where it somehow belongs, and goes on.

"My father and uncles built both houses. That is why we saved them. Hard work dragging the logs over the ridge and into that creek valley. Sad nights."

As Reginald makes his way back up the ridge face, he points out the fencing and their old land holdings.

"Later, the Army leased out some of this land. We found cattle down here. Told the owners we would round `em up and auction `em. It`s our land!"

At father Bird Horse`s home, dogs come out barking, cats prowl and birds fly off when people approach. There is no water and no heat other than an old wood-burning stove. An empty cistern like his son`s, sticks up beside the house. The outhouse rests about a hundred yards off, near the first wood plank home they built after dislocation. Just a short ways south is the old house from down by the river, carefully reconstructed with the original ranch gate and name plank next to it. The ancient loghouse sits apart as if revered for its history, and no other purpose. Reginald gets incisive at his father's place.

"They said 'free electricity, water, heating'."

When father Bird Horse leans against the weathered logs, there is a strange, special communion of man and home. The old man is of few words and deep wisdom.

Perhaps visitors are surprised when they enter his newer home, carefully furnished with an old iron bed, hand-made frameworks and simple wood chairs, all brought into perspective by the shining face of a resplendent Jesus Christ on the wall.

"Sometimes I go to a Sundance down on Cheyenne River, or the Rosebud," Reginald continues as he drives along the road that hugs the river ridge. "And I help whose who need to have a vision, waiting three or four days below the selected butte."

For Reginald Bird Horse, his father and family, the center of the world is along the Grand River near the confluence of the Missouri. That is why he does not move. He waits. Perhaps the day will come when he will return and live on what they call the "Taken Land.'"

IRON CLOUD

"All my land was taken, and my brothers` too. Here is my wife`s land. Her father lost most of his ranch. Just this little place here, and those hills out beyond the corral."

Vernon Iron Cloud speaks only when he is clear in his mind on what he wants to say. And then he says it.

"I was maybe thirty when they took our land... We went to big meetings at Fort Yates held by the Tribal Council. Only reservation people were there, and they told us what we had to do. Where to go. How much they paid for each acre."

His wife, Theo, is always smiling, finding something to share her gentle laughter about, and attentive, hardly missing a nuance of any visitor's actions. Above their kitchen table is an arresting painted photograph of an eternally long table neatly set for the Last Supper, candles lit and no one present in the hauntingly beautiful hills and seaside in the background.

"No, the Council just told us the Corps of Engineers was gonna build the dam. The talk about electricity started up after the people moved."

"Many people lived along the river on the bend toward the Missouri. The old ones couldn`t move, were never happy in the new places."

Theo recounts the local liturgy of the taken land. "Maud Gunner moved up over those hills. She died shortly after that. The life just left her, like the land. And Harry Bone Club was one of the last to move. He didn`t want to live after the water covered his land. And old Ed Hawk never did move. Said he would never leave the land alive."

Nary a tree stands against the horizon nor breaks the monotonous hills rounding down to the nude waterline of the Oahe reservoir. Breaking through the low-lying hills on a road made on an old railroad line, an awesome sight greets the visitor primed with the personalized stories of the many ranches amid the wandering forests of the greater Grand and Missouri River valleys.

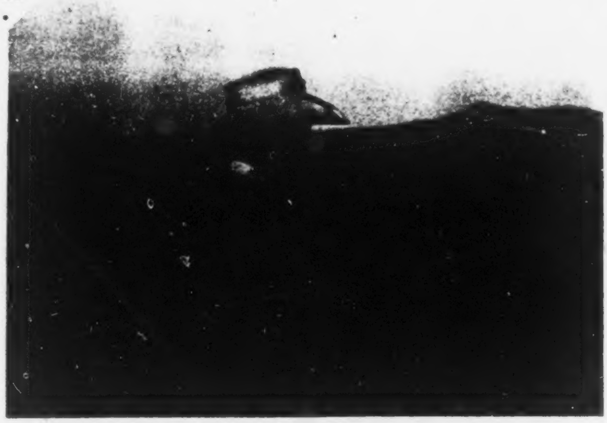
"Down under that water, from across that ridge to here, was all trees. Two miles, across there, below that cut bank, that was my place."

"The old people who moved away. They come back after many years, they can`t recognize the place. Always they ask `where is Maud`s?` or some such thing."

Iron Cloud enjoys a strong reputation in the communities of the area, both as a supporter of traditional ways, and as a veteran. His obligation to protect the people has been fulfilled, `warrior` status is honored among Indian people. To maintain that respect, he must be cautious with words, humble about his deeds, honor sacred ways, elders, and always speak the truth.

"Out beyond that cut-bank peninsula, past my old place, all that is wearing down. Someday, those hills will be gone... That land across the bay. Wearing away... Along the water`s edge there, below in the trees, that is old Hawk`s place."

When Vernon points somewhere and describes some event or situation, it becomes alive, for himself and the listener.



"They moved the younger ones first. That house near the water? Came all the way from that area below the Chief Gall Inn out there... Then the older people, slowly each gave in, started the long journey. The waters rising. But their heart stayed with the land... Only Hawk refused. Said he would die first... And he did... The waters rising down there, his house standing, and nowhere to go."

Vernon Iron Cloud begins to walk back toward his home, away from the forested river country where he was born and grew up.

"That outlet, the irrigation pipe turns west there, heads over that knoll... If we fought, maybe we could use that water."

Back at his ranch, sitting in angular contrast to the rolling brown hills, the Iron Cloud`s house is busy with relatives coming and going, grandchildren, eight new puppies, cats and non-Indian farmers arriving to inspect the stock that Vernon is breaking for them. Outside their house is another cistern, like the Bird Horses`. The irony is especially poignant with the irrigation outlet not far from the home. Vernon is reluctant to be critical of anyone involved with such decisions. Traditionally minded, he views the world, especially within historical treaty relations of the Sioux with the U.S. government, as that which is unfolding, or simply what is happening. The veteran, as honored warrior, speaks the truth clearly and firmly, but does not engage in such demeaning and irrelevant actions as arguing angrily, or trying to "prove" things with facts.

DEDICATED TO THE MEMORY OF

HARRY SWIFT HORSE

1900 - 1987

"The Earth Is Life"

the tribe to pay its expenses involved in the taking.) See Id. at Section 13.

Thus, Congress in 1958 after lengthy negotiations and hearings, a process which lasted from 1950 to 1958, provided in excess of $12 million for the 3,600 residents of the reservation and the 1,700 nonresidents of the reservation.

In a parallel fashion, the existing statutory scheme allows for the development of recreation at the project, and the consequent enrichment of both the state and the tribe. P.L. 85-915 provided for the compensation of the tribe for all its rights in the taken land, and for whatever claims it may have had in the bottom lands of the Missouri River. By extinguishing tribal jurisdiction over the taken lands, P.L. 85-915 paved the way for the uniform application of state civil and criminal law, including a uniform scheme of state hunting and fishing regulations, over these lands and overlying water. Such a uniform application of state law is necessary to assure sustained and coordinated development of the natural resources and recreational potential of these lands, protection of the conservation interests on these lands, and open access to these lands for all members of the public. Divided jurisdiction leads to inevitable disputes and, although much remains to be done in the way of economic development on behalf of both the state and the tribe, arbitrary statutory provisions shifting lands out of federal proprietary ownership and mandating tribal jurisdiction over hunting and fishing to the exclusion of the states of North and South Dakota within the boundaries of the reservation, will not produce the desired result.

The economic realities of the land in question must be considered. The lands taken by the United States for the Oahe Project may be used for grazing, recreation, and wildlife development. The tribe already has the privilege of grazing over this land. The state of South Dakota is developing recreation sites on the lands of the United States along the Oahe Project and has developed an extensive program for stocking the reservoir with fish. For example, during the past year, the state of South Dakota placed 1 million salmon smelt, approximately 228,000 walleye fingerlings, 6.6 million walleye fry, 50,000 steelhead trout of almost catchable size, and 200,000 small mouth bass within the Oahe Reservoir. The funding of these projects is principally license fees paid by sportsmen. The state of South Dakota stands ready to cooperate with the tribe in the further development of these resources. In addition, the Corps of

Engineers and the state are making plans for developing wildlife resources on Oahe Project lands, under the mitigation mandates of the 1958 Fish and Wildlife Coordination Act. These plans will benefit the natural ecology of the region, as well as improve the hunting resource for the benefit of the tribe and the state. Section 7 of the proposed bill, as well as the provision in Section 3 recognizing exclusive jurisdiction over hunting and fishing in the tribe, would do nothing which cannot be done at present in advancing the economic interests of the tribe in cooperation with the state of South Dakota.

This fact can be seen by the error in Section 3 of the proposed bill giving the tribe ownership of 50 percent of the fish eggs spawned at the Grand River Spawning Station, allegedly run by the United States Fish and Wildlife Service. In reality, this station is owned by the state of South Dakota. The fish stocking operation of which it is a component is potentially of great benefit to the tribe but it is in tribal-state cooperation, as well as in tribal-federal cooperation, that the future prosperity of this region lies.

Although the referenced provisions of the proposed law would not substantially help the tribe, they could have harmful effects on the development of this region. The present uniform state statutory scheme over Corps project lands, which protects the conservation interests of the states of North and South Dakota and indirectly of the tribe, would be disruptive by a new checkerboard pattern of ownership subject to two overlapping jurisdictional patterns. The lands above 1,620 m.s.l. which were taken from the tribe or its members would revert to beneficial ownership by the tribe, but interspersed among these lands are lands taken from non-Indians which would not revert to the tribe and would remain under state jurisdiction. In addition, the 1,620 m.s.l. line itself shifts, due to erosion, so that even this demarcation between state and tribal jurisdiction would continually change. The confusion in enforcing hunting and fishing regulations, criminal statutes and other laws would be substantial. Depriving the states of North and South Dakota of hunting and fishing jurisdiction not only over Corps project lands above 1,620 m.s.l., but over all lands on the reservation owned by non-Indians, over which these states currently assert jurisdiction pursuant to Supreme Court opinions, shows a total disregard for the Constitutional principles of federalism and comity between the federal and state sovereignties. See, e.g., Montana v. United States, 450 U.S. 544 1981.

Additionally, there is a finding in the Bill that the tribe "is entitled to revenues produced by the hydropower generated at Oahe, Fort Randall, Big Bend, and Gavins Point Dams." See p. 4 of the bill. Moreover, the tribe claims the right to the use of power "generated from the Pick-Sloan Missouri Basin Program, without reimbursement for farming purposes," p. 9. See also, p. 11. It should be recognized that, should these claims be sustained, power rates within South Dakota and within other states would most certainly rise.

In conclusion, the taking of land belonging to the Standing Rock Sioux Tribe and its members pursuant to federal law undoubtedly inflicted hardship on the tribe, which Congress attempted to rectify at the time. The efforts of the federal government were not altogether successful, and further efforts are welcome. Yet, the condemnation of non-Indian lands also inflicted hardship on non-Indian landowners in North and South Dakota, whose interests were not protected to the same extent by Congress and the federal bureaucracies. Congress does not intend to return land, to the extend it is not flooded, to these people. At this late date, it would be inequitable and divisive to single out one group for preferential treatment with regard to the restoration of lands rather than developing the region for recreation and wildlife purposes for all concerned.

House Bill - The proposed bill in the House of Representatives provides in Section 206 that lands taken by the United States for the Garrison Project from the Three Affiliated Tribes should be declared excess and held in trust status for the tribes. This provision is more sweeping than the analogous provision in the proposed Senate bill dealing with the Standing Rock Sioux Tribe as it would impose trust status on all former Indian lands held by the United States at the Garrison Project, not merely lands above a certain elevation. Although this law would not directly impact South Dakota, it would have precedential value in how the federal government deals with lands in South Dakota.

As with the Oahe Project, Congress meant to compensate the Three Affiliated Tribes and its members for all their rights, including jurisdictional prerogatives, over lands taken for project purposes. North Dakota civil and criminal jurisdiction, including jurisdiction over hunting and fishing, currently applies to these project lands. Corps regulatory authority on behalf of the United States ensures open access to these lands by the public, as well as regulation of recreation development. The restoration of trust status over these lands would create a checkerboard jurisdictional pattern in the area, as lands condemned from non-Indians for Garrison project purposes would still remain under sole Unites States ownership, and consequently under state civil and criminal jurisdiction. The United States would not have the same ability to ensure general public access or to regulate the development of recreation facilities along the reservoir. The return of Indian lands but not of non-Indian lands also gives rise to questions of fairness. As in the case of the Oahe Project, the Three Affiliated Tribes will likely not receive any concrete economic benefits from this provision of the proposed bill which they could not receive anyway by cooperating with the state of North Dakota. The provision is only likely to create confusion, disputes and bitterness.

In conclusion, unless the proposed bills are largely rewritten to answer my expressed concerns, I regretfully reiterate my strong opposition to their passage.

Very truly yours,

GEORGE S. MICKELSON

GSM:ggl

cc: The Honorable Thomas A. Daschle
The Honorable Tim Johnson
The Honorable Larry Pressler
The Honorable George A. Sinner